CLERK'S COPY.

# TRANSCRIPT OF RECORD

## Supreme Court of the United States

OCTOBER TERM, 1931

## No. 158

AMOS SHRIVER, APPELLANT,

*vs.*

WOODBINE SAVINGS BANK OF WOODBINE, IOWA

APPEAL FROM THE SUPREME COURT OF THE STATE OF IOWA

FILED JUNE 12, 1931

(35,972)

# (35,972)

# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1931

# No. 158

---

AMOS SHRIVER, APPELLANT,

*vs.*

WOODBINE SAVINGS BANK OF WOODBINE, IOWA

---

APPEAL FROM THE SUPREME COURT OF THE STATE OF IOWA

---

INDEX


| | Original | Print |
|---|---|---|
| Proceedings in supreme court of Iowa | 1 | 1 |
| Appellant's abstract of record from district court of Iowa County | 1 | 1 |
| Petition | 2 | 1 |
| Answer | 6 | 4 |
| Reply | 10 | 7 |
| Statement of evidence | 11 | 7 |
| Exhibit A—Stipulation of facts | 11 | 8 |
| Exhibit "1" of Exhibit "A," being articles of incorporation | 21 | 15 |
| Exhibit "2" of Exhibit "A," being amended and substituted articles of incorporation | 23 | 17 |
| Exhibit "3" of Exhibit "A," being amendment to articles of incorporation | 30 | 22 |
| Exhibit "3½" of Exhibit "A," being amendment to articles of incorporation | 31 | 22 |
| Exhibit "4" of Exhibit "A," being order of superintendent of banking | 31 | 23 |
| Exhibit "5" of Exhibit "A," being resolution | 32 | 23 |
| Exhibit "6" of Exhibit "A," being notice to Amos Shriver | 33 | 24 |


JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 4, 1931

| | Original | Print |
|---|---|---|
| Exhibit "7" of Exhibit "A," being letter to Amos Shriver | 34 | 25 |
| Exhibit "8" of Exhibit "A," being letter to Edward F. Knepper | 35 | 26 |
| Exhibit "9" of Exhibit "A," being letter to Edward F. Knepper | 36 | 27 |
| Exhibit "10" of Exhibit "A," being notice to Lucy Bladen | 37 | 27 |
| Exhibit "11" of Exhibit "A" is letter to Lucy Bladen | 39 | 28 |
| Exhibit "12" of Exhibit "A" is letter to Carl H. Knepper | 40 | 29 |
| Exhibit "13" of Exhibit "A," being letter to Edward F. Knepper | 40 | 29 |
| Exhibit "14" of Exhibit "A," being resolutions | 40 | 30 |
| Exhibit "15" of Exhibit "A," being notice to Amos Shriver, Carl H. Knepper, and Lucy Bladen | 41 | 31 |
| Exhibit "16" of Exhibit "A," being notice to Edward F. Knepper | 43 | 32 |
| Exhibit "17" of Exhibit "A," being notice published of sale of stock | 44 | 33 |
| Statements re Exhibits 18, 19, 21, and 22 of Exhibit A | 45 | 33 |
| Exhibit 22 of Exhibit A—Certificate of Lewis Haas | 47 | 35 |
| Defendant's motion to dismiss | 47 | 35 |
| Judgment | 50 | 37 |
| Notice of appeal | 57 | 42 |
| Certificate of counsel to transcript | 57 | 42 |
| Notice of oral argument | 58 | 43 |
| Assignments of error | 63 | 43 |
| Opinion, Faville, J | 70 | 47 |
| Order granting rehearing | 85 | 55 |
| Opinion on rehearing, Kindig, J | 87 | 56 |
| Dissenting opinion | 102 | 64 |
| Judgment | 127 | 78 |
| Petition for appeal, assignments of error, and prayer for appeal | 128 | 73 |
| Order allowing appeal | 132 | 80 |
| Bond on appeal (omitted in printing) | 134 | |
| Citation and service (omitted in printing) | 136 | |
| Stipulation as to transcript of record | 138 | 81 |
| Clerk's certificate (omitted in printing) | 140 | |
| Statement of points to be relied upon and designation to print the entire record | 141 | 83 |

[fol. 1]

# IN THE SUPREME COURT OF IOWA

WOODBINE SAVINGS BANK OF WOODBINE, IOWA, Appellee,

vs.

AMOS SHRIVER, Appellant

Appeal from the District Court of Iowa County
Honorable H. D. Evans, Judge

## Appellant's Abstract of Record

[fol. 2] On the 12th day of April, 1928, the Woodbine Savings Bank of Woodbine, Iowa, filed in the Office of the Clerk of the District Court of Iowa County, Iowa, its amended and substituted

PETITION AT LAW

against Amos Shriver, as follows:

[Caption omitted]

Comes now the plaintiff and for cause of action against defendant, states:

That it is a corporation duly organized and existing under the laws of the State of Iowa, being a savings bank and doing a general banking business in the Town of Woodbine, Harrison County, Iowa.

That said plaintiff was duly incorporated during the year 1891; that on May 10th, 1911, plaintiff was duly and legally reorganized and reincorporated with a capital stock of thirty thousand ($30,000.00) dollars; that, on the 24th day of January, 1917, said articles of incorporation of plaintiff were amended; that on the 19th day of February, 1920, plaintiff duly and legally amended its articles of incorporation and increased the capital stock of said corporation from thirty thousand dollars ($30,000.00) to fifty thousand ($50,000.00) dollars; that on the 5th day of April, 1921, plaintiff duly and legally amended its articles of incorporation.

That on the 18th day of May, 1891, defendant became the owner of ten shares of the capital stock of plaintiff corporation, said stock being of the par value of one hundred ($100.00) dollars a share, or a total par value of one thousand ($1000.00) dollars, and defendant continued to own [fol. 3] said ten shares of stock in plaintiff corporation until the 17th day of November, 1927.

Plaintiff states that on the 16th day of April, 1906, defendant became the owner of ten shares of the capital stock of plaintiff corporation, said stock being of the par value of one hundred ($100.00) dollars a share, or a total par value of one thousand ($1000.00) dollars, and that defendant continued to own said stock until the 17th day of November, 1927.

Plaintiff states that on the 18th day of May, 1891, Michael Shriver, father of defendant, became the owner of twenty shares of stock in plaintiff corporation; that on the 23rd day of May, 1891, the said Michael Shriver, father of defendant, became the owner of one share of stock in plaintiff corporation; that on the 1st day of July, 1895, the said Michael Shriver, father of defendant, became the owner of nine shares of stock of plaintiff corporation; that on the 25th day of January, 1900, the said Michael Shriver, father of defendant, became the owner of seven shares of the capital stock of plaintiff corporation; that all of said stock was of the par value of one hundred ($100.00) dollars, or a total par value of thirty seven hundred ($3700.00) dollars; that subsequent to the 25th day of January, 1900, the said Michael Shriver departed this life intestate and defendant thereupon became the owner of an undivided one-sixth interest of the stock owned by the said Michael Shriver; that on the 14th day of February, 1917, defendant became the owner of and received a certificate for 6 1/6 shares of the capital stock of plaintiff corporation; that thereafter, said [fol. 4] defendant sold a portion of said stock, surrendered said stock certificate and on the 8th day of June, 1925, became the owner of and received a certificate of stock for six shares of the capital stock of plaintiff corporation, said stock being of the par value of one hundred ($100.00) dollars a share, or a total par value of six hundred ($600.00) dollars; that defendant continued to own said stock until the 17th day of November, 1927.

That on the 15th day of February, 1927, the capital stock of plaintiff bank was impaired by losses or otherwise, to the extent of 100% or fifty thousand ($50,000.00) dollars, and on the 15th day of February, 1927, the superintendent of banking of the State of Iowa, required an assessment upon the stockholders of plaintiff bank by ordering the directors thereof to levy an assessment equal to 100% of its par value or one hundred ($100.00) dollars a share, being a total of fifty thousand ($50,000.00) dollars on all stock and shares of stock of plaintiff bank; that the Board of Directors of plaintiff bank did, on the 10th day of March, 1927, make and levy a ratable assessment of 100% of the par value of stock and shares of stock of said bank upon the stockholders of said bank.

That thereafter, plaintiff gave the stockholders of plaintiff bank, including defendant, due and legal notice of the impairment of said capital stock and the making and levying of said assessment and of the entire sum to be raised by said assessment, and of the amount due from defendant, all as required by law.

[fol. 5] That more than ninety days expired after the date of mailing of said notice and defendant failed, neglected and refused to pay the assessment against the 26 shares of stock of said bank owned by him; that after the expiration of ninety days from the date of mailing said notice of assessment, defendant not having paid the same, the Board of Directors of plaintiff bank caused to be sold at public auction, the twenty-six shares of stock of said bank owned by defendant, said sale being held at the banking house of plaintiff at Woodbine, Iowa; that plaintiff gave due and legal notice of said sale, all as required by law.

That at said time, to-wit: on November 17th, 1927, the twenty-six shares of stock of defendant was sold at public auction to the highest bidder for the sum of one ($1.00) dollar per share, or a total of twenty-six ($26.00) dollars; that the amount received from said sale, to-wit: Twenty-six ($26.00) dollars, was applied upon the assessment levied against the stock of defendant, and that there remains a deficiency on said assessment of twenty-five hundred seventy four ($2574.00) dollars.

That by reason of all the matters hereinbefore stated, there is due and owing plaintiff from defendant, the sum of twenty-five hundred seventy-four ($2574.00) dollars, to-

gether with six per cent interest thereon from November 17th, 1927.

Wherefore, plaintiff demands judgment against defendant for the sum of twenty-five hundred seventy-four ($2574.00) dollars, together with six per cent interest there- [fol. 6] on from November 17th, 1927, and for the costs of this action.

---

Afterwards, and on the 12th day of April, 1928, the defendant filed in said case in the Office of the Clerk of the District Court of Iowa County, Iowa, his amended and substituted

ANSWER

as follows:

Comes now the defendant and for answer, states:

Defendant states he denies each and every allegation made by the plaintiff in its petition as amended, except such as are hereinafter expressly admitted.

Defendant admits that plaintiff is a corporation under the laws of the State of Iowa, and is a savings bank located in the Town of Woodbine, Iowa, and that this defendant was the owner of twenty-six (26) shares of the capital stock of the plaintiff bank, of the par value of $100.00 per share.

Defendant states that the plaintiff bank was organized and incorporated in the year 1891, and that he became the owner of ten shares of said twenty-six shares of the capital stock owned by him in said bank during the year 1891, which ten shares of stock were evidenced by stock certificate No. 6 of plaintiff bank under date of May 18, 1891.

Defendant states he became the owner of another ten shares of said twenty-six shares of the capital stock in plaintiff's bank, owned by him in the year 1906, the same being evidenced by stock certificate No. 10 of plaintiff's [fol. 7] bank, under date of April 16, 1906.

Defendant states that the other six shares of the stock owned by him in said bank were acquired by him upon the settlement of his deceased father's estate.

That the defendant's father died the owner of thirty-seven shares of the capital stock of plaintiff's bank, and upon the death of defendant's father, defendant be-

came the owner of an undivided one-sixth interest in the thirty-seven shares of the capital stock of said bank owned by his father in his lifetime.

Defendant states that the estate of his father was finally settled and the personal property of his said estate was divided about the year 1917, and the certificate or certificates evidencing the thirty-seven shares of capital stock of plaintiff bank was sent to said bank, who issued to this defendant, under date of February 14, 1917, a certificate evidencing the ownership by this defendant of 6 1/6 shares of the capital stock of plaintiff's bank.

That about the year 1925 defendant received notification from plaintiff bank that it was not proper for it to have a share of its capital stock split into fractional parts and such fractional parts owned by six persons, and defendant was requested by the plaintiff bank to send his certificate evidencing the ownership of the 6 1/6 shares of its capital stock to said bank, and plaintiff bank then informed defendant that if he would do so it would pay him for the one-sixth share of capital stock mentioned in said certificate and issue to him another certificate evidencing the ownership by him of the other six shares of capital stock of said [fol. 8] bank.

Defendant states that in compliance with the said request of plaintiff bank he sent his said stock certificate evidencing his ownership of six and one-sixth shares of capital stock of plaintiff bank to the said bank and he was paid for the one-sixth share of said stock mentioned in said certificate and a new certificate was sent him by said bank evidencing his ownership of the six shares of capital stock of said bank owned by him, such certificate being No. 112 of said bank and dated June 8, 1925.

Defendant states that at the time he became the owner of said twenty-six shares of the capital stock of the plaintiff bank, and at the time said twenty-six shares of capital stock of plaintiff bank was issued by plaintiff bank there was no personal liability imposed by law upon savings banks organized under the laws of Iowa, such as the claimed liability sought to be enforced by plaintiff against the defendant in this action.

Defendant states said twenty-six shares of the capital stock of plaintiff bank were issued and in existence, and defendant was the owner and holder thereof, prior to and

at the time Chapter 181 of the Acts of the Forty-first Regular General Assembly of the State of Iowa was passed by said Assembly and became effective as the law of the State of Iowa.

Defendant states that Chapter 181 of the Acts of the Forty-first General Assembly of the State of Iowa (Section 9248-a Code of Iowa, 1927) as and if applied to the twenty-six shares of capital stock owned by this defendant in plain- [fol. 9] tiff's bank, and to this defendant as the owner of such stock, is violative and in violation of Section 10 of Article One of the Constitution of the United States, which forbids any state to pass any law impairing the obligations of contracts, and is violative, and in violation of Section 21 of Act 1 of the Constitution of the State of Iowa, which provides that no law impairing obligation of contracts shall ever be passed.

Defendant states that as and if applied to the said twenty-six shares of the capital stock owned by defendant in plaintiff bank, and to the defendant as owner thereof, the said Chapter 181 Acts of the Forty-first General Assembly of Iowa (Sec. 9248-a Code of Iowa, 1927) is violative and in violation of the Fourteenth Amendment to the Constitution of the United States, and of Section Nine of Article One of the Constitution of the State of Iowa, as depriving this defendant of vested rights and depriving him of his property without due process of law.

Defendant states that Chapter 181 Acts of 41st General Assembly of Iowa (Section 9248-a1 Code of Iowa, 1927) as and if applied to the said shares of the capital stock owned by him, and to this defendant as the owner of such stock, is unconstitutional for the reason that such act impairs the obligation of the contract existing between this defendant and the plaintiff bank by virue of defendant being a stockholder in said bank, as it adds a new and different obligation on this defendant from any which he ever contracted to assume, and is therefor- in violation of Section 10 Article One of the Constitution of the United [fol. 10] States, and also violative and in violation of Section 21, Article 1 of the Constitution of the State of Iowa.

Defendant further states said Chapter 181, Acts of the 41st General Assembly of Iowa (Section 9248-a1, Code of 1927) is invalid and unconstitutional for the reason that the Legislature, or General Assembly of the State of Iowa,

was without authority to pass such a law, and for the further reason that said law was not passed by a vote of two-thirds of each branch of the General Assembly, and therefore, if the General Assembly had any authority to pass such an act, it was not passed by the vote required in each branch of the General Assembly, as provided by Section 12, Article 8 of the Constitution of Iowa.

That Sections 9247, 9248, 9248-a1 of the Code of 1927 are inconsistent with Sections 9235, 9238, 9246 of the Code of 1927, and therefor- sections *Sections* 9247, 9248 and 9248-a1 of the Code of 1927 are void, and said last three sections of the Code of 1927 are coercive if applied as to the stock owned by the defendant in the plaintiff corporation, and denies the defendant of his vested rights in his property and contract.

---

Afterwards, and on the 12th day of April, 1928, the plaintiff filed in said case in the office of the Clerk of the District Court of Iowa County, Iowa, its

REPLY

as follows:

Comes now the plaintiff and by way of reply to defendant's amended and substituted answer, states that plaintiff [fol. 11] denies each and every affirmative allegation and plea therein contained in any way inconsistent with the claims of plaintiff's petition.

---

On the 12th day of April, 1928, the trial of said cause was commenced at Marengo, Iowa, before Hon. H. D. Evans, Judge.

It is agreed between the plaintiff and the defendant that a jury in this cause is waived, and that this cause be tried to the court.

Plaintiff requests that the court make a finding of facts and conclusion of law.

STATEMENT OF EVIDENCE

Plaintiff's Evidence

The plaintiff and defendant offer in evidence Exhibit "A," being a stipulation between the plaintiff and the de-

fendant, together with all exhibits attached thereto, or made a part thereof.

EXHIBIT A

This Stipulation, made this 11th day of April, 1928, by and between Woodbine Savings Bank of Woodbine, Iowa, party of the first part, and Edward F. Knepper, Amos Shriver, Lucy Bladen and Carl H. Knepper, parties of the second part;

Witnesseth:

That Whereas, party of the first part has instituted action against each of the parties of the second part in the District Court of Iowa County, Iowa, said actions being law actions and being Cause Numbers 12519, 12520, 12521 and 12522, reference being hereby made to said actions as the same appear of record or on file in the office of the Clerk of [fol. 12] the District Court of Iowa County, Iowa;

And Whereas, the parties hereto desire to stipulate with reference to certain facts involved in said causes;

It is, Therefore, Agreed and Stipulated by and between the parties hereto, as follows, to-wit:

1. The parties hereto hereby stipulate and agree to waive a jury in each of the causes of action hereinbefore described and to try the same to the court.

2. It is further stipulated and agreed that this stipulation shall be offered in evidence in support of the issues as made by the pleadings herein, and that the facts herein stipulated shall be received and considered by the court as evidence in support of said issues.

3. It is stipulated and agreed that plaintiff was duly and legally incorporated as a savings bank under the laws of the State of Iowa, on the 6th day of May, 1891, and at said time adopted articles of incorporation, the original of said articles being attached hereto, marked Exhibit "1" and made a part hereof by reference.

4. It is stipulated and agreed that on the 11th day of May, 1911, the franchise of plaintiff under its original articles having expired, plaintiff duly and legally reincorporated and reorganized as a savings bank under the laws of the State of Iowa, and at said time adopted, amended and substituted articles of incorporation, the original thereof

being attached hereto, marked Exhibit "2," and made a part hereof by reference.

5. It is stipulated and agreed that on the 27th day of [fol. 13] February, 1920, plaintiff duly and legally adopted an amendment to its articles of incorporation increasing its capital stock from Thirty Thousand ($30,000.00) Dollars to Fifty Thousand ($50,000.00) Dollars, the original of said amendment being attached hereto, marked Exhibit "3" and made a part hereof.

5½. It is stipulated and agreed that on the 26th day of January, 1917, plaintiff duly and legally adopted an amendment to its articles of incorporation and provided that the affairs of plaintiff corporation should be conducted and managed by a board of five directors, the original of said amendment being attached hereto, marked Exhibit "3½" and made a part hereof by reference the same as though set out in full herein.

6. It is stipulated and agreed that on the 15th day of February, 1927, the capital stock of plaintiff bank was impaired to the extent of 100% or Fifty Thousand ($50,000.00) Dollars, and that on said date the superintendent of banking of the State of Iowa, so determined; that on February 15, 1927, said superintendent of banking addressed an order to plaintiff bank and to the several members of plaintiff's board of directors, requiring an assessment against the stock in plaintiff bank and fixing the amount thereof at 100% or Fifty Thousand ($50,000.00) Dollars; that said order was in writing and that Exhibit "4" attached hereto is an original of said order so given by said superintendent of banking to plaintiff and to each of its directors, and it is stipulated and agreed that an order identical with Exhibit "4" was addressed to and received by plaintiff bank and by each of the five directors thereof, [fol. 14] on or about the 16th day of February, 1927.

7. That on March 10, 1927, the board of directors of plaintiff bank at a meeting duly and legally called, passed and adopted a resolution, a true copy of said resolution and of the minutes of said meeting being attached hereto, marked Exhibit "5" and made a part hereof by reference.

8. That thereafter, plaintiff gave the stockholders of said bank, including defendants and each of them, certain no-

tices in writing signed by the president and attested by the cashier of plaintiff bank, under plaintiff's seal, by depositing said notices in the Post office at Woodbine, Iowa, addressed to defendants and each of them at their last known residences; that said notices were duly received by said defendants and each of them in the regular course of the United States mail.

(a) That Exhibits "6" and "7" attached hereto are true copies of said notices so addressed and mailed to and received by defendant, Amos Shriver.

(b) That Exhibits "8" and "9" are true copies of said notice so addressed and mailed to and received by defendant, Edward F. Knepper.

(c) That Exhibits "10" and "11" are true copies of said notices so addressed and mailed to and received by defendant, Lucy Bladen.

(d) That Exhibits "12" and "13" are true copies of said notices so addressed and mailed to and received by defendant, Carl H. Knepper.

By reference all of said Exhibits are made a part hereof, particularly including the affidavit on the reverse side of said Exhibits.

[fol. 15] 9. It is stipulated and agreed that said defendants and each of them failed, neglected and refused and still fail, neglect and refuse to pay the claimed assessment against them and each of them and against the stock belonging to each of them.

10. That on the 4th day of October, 1927, the board of directors of plaintiff bank at a regular meeting duly and legally called and held, adopted a resolution to cause the stock belonging to defendant and to each of them to be sold at public auction and fixing the time and place thereof, a true copy of said resolution and of the minutes of said directors' meeting and certification thereof, being attached hereto and made a part hereof as Exhibit "14."

11. That on the 14th day of October, 1927, plaintiff gave notice to all stockholders failing to pay the claimed assessment above referred to, including defendants and each of them, of the amount due thereunder from the stock-

holders and the time and place of sale; that said notice to said defendants was served personally on said defendants, and each of them, as follows:

(a) Attached hereto and made a part hereof by reference is Exhibit "15," being a true copy of the notice to defendant, Amos Shriver, Carl H. Knepper, and Lucy Bladen, together with the returns of service thereof.

(b) Attached hereto and made a part hereof is Exhibit "16" being a true copy of the notice served on defendant, Edward F. Knepper, together with the return of service thereof.

12. It is stipulated and agreed that on the 7th day of November, 1927, plaintiff caused to be published and there [fol. 16] was published in Missouri Valley Times, a Newspaper of the County in which plaintiff bank is located, a notice, a true copy of which is attached hereto, marked Exhibit "17" and made a part hereof by reference; that said notice was published in one issue of said newspaper on the 7th day of November, 1927.

13. That on the 17th day of November, 1927, at a public auction sale held at the banking house of plaintiff in Woodbine, Iowa, the stock owned by parties of the second part was sold to the highest and best bidder in the amounts and for the sums as follows, to-wit:

(a) The twenty-six shares of stock belonging to defendant, Amos Shriver, was then and there sold for the sum of One (1.00) Dollar per share or a total sum of Twenty-six ($26.00) Dollars; that the amount realized from said sale, to-wit: Twenty-six ($26.00) Dollars, was duly credited on said claimed assessment, leaving a deficiency on said claimed assessment in the amount of Twenty-five Hundred Seventy-four ($2574.00) Dollars.

(b) The three shares of stock belonging to defendant, Carl H. Knepper, were then and there sold for the sum of One (1.00) Dollar per share or a total sum of Three ($3.00) Dollars, and the amount thereby realized, to-wit: Three (3.00) Dollars was duly credited on said claimed assessment, leaving a deficiency on said claimed assessment in the amount of Two Hundred Ninety-seven ($297.00) Dollars.

(c) The four shares of stock owned by defendant, Edward F. Knepper, were then and there sold for the sum [fol. 17] of One (1.00) Dollar per share, or a total of Four ($4.00) Dollars, and the amount so realized was duly credited upon the said claimed assessment, leaving a definciency on said claimed assessment in the amount of Three Hundred Ninety-six ($396.00) Dollars.

(d) The sixty shares of stock belonging to defendant, Lucy Bladen, were then and there sold for the sum of One (1.00) Dollar per share or a total of Six (6.00) Dollars, and that said amount thereby realized was duly credited upon the claimed assessment, leaving a deficiency on said claimed assessment in the amount of Five Hundred Ninety-four (594.00) Dollars.

14. It is stipulated and agreed that all the stock owned and held by stockholders in plaintiff bank who failed, neglected and refused to pay the claimed assessment hereinbefore referred to, was sold on the 17th day of November, 1927, at the banking house of plaintiff in Woodbine, Iowa, and that all of said stock was sold for One (1.00) Dollar per share.

15. That defendants never attended any stockholders' meetings of said bank and were given no notice of any stockholders' meeting in connection with the claimed assessment hereinbefore referred to, and in connection with the alleged sale of defendants' stock.

16. That subsequent to the year 1911 and prior to March, 1925, defendants and each of them were paid and accepted dividends on the stock in plaintiff bank held by them.

17. It is stipulated and agreed that at the time of the convening of the Forty-first General Assembly of Iowa, [fol. 18] there were 108 duly elected, qualified and acting members of the House of Representatives and 50 duly elected, qualified and acting members of the Senate of Iowa; that the final vote cast in the House of Representatives in connection with Senate File No. 38 as Amended, was as follows: 64 affirmatives, 5 negatives and 39 absent, or not voting; that the final vote cast in the Senate of Iowa in connection with said Act known as Senate File No. 38 as amended, was as follows: 28 affirmatives, 9 nega-

tives and 13 absent, or not voting, as shown by the Senate and House Journal published by the State of Iowa, copies of which may be received in evidence in lieu of the original journals of said Senate and House of Representatives, with the same force and effect as though the originals of said journals were offered and received in evidence.

18. It is stipulated and agreed that defendant, Amos Shriver, did, on the 18th day of May, 1891, become the owner of ten shares of the capital stock of plaintiff corporation, said stock being of the par value of One Hundred Dollars ($100.00), a share or a total par value of One Thousand ($1000) Dollars; and that said defendant continued to own said ten shares of stock in plaintiff corporation until November 17th, 1927; that on the 16th day of April, 1906, defendant, Amos Shriver, became the owner of ten shares of the capital stock of plaintiff corporation, and stock being of the par value of One Hundred ($100.00) Dollars a share or a total par value of One Thousand ($1000.00) Dollars, and that said defendant continued to own said stock until November 17, 1927; that on Febru-[fol. 19] ary 14th, 1917, defendant, Amos Shriver, became the owner of six and one-sixth shares of the capital stock of plaintiff corporation and thereafter he was informed by plaintiff that the banking department of the State of Iowa was criticizing plaintiff in that a part of its bank stock was owned in fractional shares; that thereafter, he sold one-sixth share of said stock, surrendered the certificate to plaintiff representing said six and one-sixth shares of stock, and on the 8th day of June, 1925, in lieu thereof, received a certificate from plaintiff bank for said six shares of stock of said bank of the par value of One Hundred ($100.00) Dollars a share or a total par value of Six Hundred ($600.00) Dollars, that said defendant continued to own said stock until November 17, 1927.

19. It is stipulated and agreed that on the 26th day of October, 1921, Carl H. Knepper became the owner of three shares of the capital stock of plaintiff corporation, said stock being of the par value of One Hundred ($100.00) Dollars a share or a total par value of Three Hundred ($300.00) Dollars, and that said defendant continued to own said stock until November 17, 1927.

20. It is stipulated and agreed that on February 14, 1917, defendant Lucy Bladen, became the owner of six and one-sixth shares of the capital stock of plaintiff corporation and thereafter she was informed by plaintiff that the banking department of the State of Iowa was criticizing plaintiff in that a part of its bank stock was owned in fractional shares; that thereafter she sold one-sixth share of said stock, surrendered the certificate to plaintiff representing said six and one-sixth shares of stock, and on the 8th day of [fol. 20] June, 1925, in lieu thereof, received a certificate from plaintiff for said six shares of stock of said bank of the par value of One Hundred ($100.00) Dollars a share, or a total par value of Six Hundred ($600.00) Dollars, and that said defendant continued to own said stock until November 17, 1927.

21. It is stipulated and agreed that defendant, Edward F. Knepper did, on the 26th day of October, 1921, become the owner of four shares of the capital stock of plaintiff bank represented by a certificate thereof issued to Elizabeth J. Knepper as his Guardian; that thereafter, and on March 1927, said defendant having attained his majority, said certificate of stock held by his Guardian was surrendered to plaintiff's bank and on said date of March 7th, 1927, a new certificate was issued in lieu thereof to defendant, Edward F. Knepper for four shares of the capital stock of plaintiff corporation, said stock being of the par value of One Hundred ($100.00) Dollars a share, or a total par value of Four Hundred ($400.00) Dollars, and said defendant continued to own said stock until November 17th, 1927.

22. It is stipulated and agreed that this stipulation may be offered in evidence in each of the causes of action hereinbefore described for the purposes hereinbefore stated.

In witness whereof the parties have hereunto set their hands the day and date first above written.

Woodbine Savings Bank of Woodbine, Iowa, by [fol. 21] Bolter & Murray, Hatter & Harned, Its Attorneys, Party of the First Part. Edward F. Knepper, Amos Shriver, Lucy Bladen, Carl H. Knepper, by Wallace & Claypool, Their Attorneys, Parties of the Second Part.

EXHIBIT "1" OF EXHIBIT "A"

is the articles of incorporation of the Woodbine Savings Bank of Woodbine, Iowa, and is, as follows:

"We, G. H. Kibler, H. C. Harshbarger, E. H. Bucknam, I. A. DeCou, H. A. Kinney, and Lewis Haas, Citizens of the State of Iowa, and such other persons as may hereafter associate themselves with us, hereby form a corporation under the provisions of Chapter Sixty (60) of the Public Law of the Fifteenth General Assembly, and acts amending and modifying the same, and to that end do adopt the following Articles of Incorporation.

Article I

The name of this corporation shall be the Woodbine Savings Bank.

Article II

The object of this corporation is to transact the usual business of a savings bank under the provisions of the acts referred to in the preamble; and it hereby takes to [fol. 22] itself any and all of the powers, and accepts all the duties and obligations, imposed by the laws of the State of Iowa for the government of savings banks.

Article III

The amount of its Capital Stock shall be Thirty Thousand ($30,000) Dollars, divided into Three Hundred (300) shares of One hundred ($100) Dollars each.

Article IV.

This corporation shall continue for the term of Twenty (20) years.

Article V

The affairs of this corporation shall be managed by a Board of Seven Directors, and the following persons shall be the Directors for the first year and also until the regular Annual Meeting to be held in June, 1892, as provided in Section 72, or until their successors shall be duly elected

and shall have qualified; G. H. Kibler, H. C. Harshbarger, E. H. Bucknam, I. A. DeCou, H. A. Kinney, E. M. Donaldson, Lewis Haas.

Article VI

The annual meeting for the election of Directors shall be held on the Second Wednesday in June in each year, the first Annual Meeting to be held on the Second Wednesday, in June, 1892. At all meetings of stockholders, each stockholder shall be entitled to one vote for every share held by him which vote he may cast in person or by proxy.

Article VII

The principal place of business shall be located in the [fol. 23] Town of Woodbine, County of Harrison and State of Iowa.

Article VIII

These Articles may be amended in whole or in part at any regular or special meeting of the stockholders, but to effect the same there must be cast in the affirmative a vote of two-thirds in amount of all the stock of all the bank; provided, that a notice of such proposed amendment shall be published at least thirty (30) days in every issue of some newspaper published in the town where the principal place of business of the bank is located, which notice shall specify the object of the meeting, and time and place of holding the same; and a certificate of the proceedings shall be executed, signed and acknowledged by the Chairman and Secretary of the meeting, and a majority of the Directors and filed and recorded the same as the original Articles of Incorporation; and a notice, stating the substance of the amendment or amendments adopted shall be published as required at the organization of the company.

G. H. Kibler, E. H. Bucknam, I. A. DeCou, H. A. Kinney, Lewis Haas.

(Duly Acknowledged.)

EXHIBIT "2" OF EXHIBIT "A"

is as follows:

Amended and Substituted Articles of Incorporation of the [fol. 24] Woodbine Savings Bank, of Woodbine, Iowa

Know all men by these presents:

That at a meeting of the stockholders of the Woodbine Savings Bank, a corporation duly organized under the laws of the State of Iowa, held at the offices of said Bank in Woodbine, Iowa, after due and legal notice had been given to the stockholders thereof in conformity with the provisions of Chapter 65—31st General Assembly of the State of Iowa, being an act to provide for the renewal or extension of the period of state and savings banks, at which the requisite amount of the stock of said bank was represented, the following amended and substituted Articles of Incorporation were adopted by the unanimous vote of the stock represented at said meeting as shown below:

Total number of shares outstanding, 300

Total number of shares represented at said meeting, 250

Total number of shares of stock voted in favor of the following Amended and Substituted Articles, 250.

Article 1

Name and Place of Business

The name of the corporation shall be "Woodbine Savings Bank," and its place of business shall be the City of Woodbine, County of Harrison, and State of Iowa.

Article II

Business

The general nature of the business to be transacted by this corporation shall be that of a savings bank, conducted [fol. 25] under the provisions of Chapters 10 and 12 of Title IX of the Code of Iowa and acts of the legislature amendatory thereto; and this corporation hereby assumes and takes to itself all and singular the powers conferred upon savings banks by the laws of Iowa, and accept all the duties and obligations imposed thereby.

## Article III

### Capital Stock

The capital stock of this corporation shall be thirty thousand dollars (30,000) Dollars and shall be divided into shares of one hundred dollars ($100) each, and shall be fully paid before the corporation begins the transaction of its business.

## Article IV

### Duration

The existence of this corporation is hereby renewed, and shall continue for a period of twenty years from the date of the expiration of the original period May 18, 1911. Its corporate existence may be terminated at any time by a three-fourths vote of the stockholders at any regular or special meeting called for that purpose, in conformity with the articles of incorporation and in accordance with the provisions of the statute.

## Article V

### Board of Directors and Officers

Section 1. The affairs of this corporation shall be conducted and managed by a Board of Six (6) Directors, who shall be elected from the shareholders at the annual meeting of stockholders of the corporation, and shall hold office for the term of one year, and until their successors are elected and qualified and have accepted office.

[fol. 26] Section 2. Any vacancy on the board of directors shall be filled by the remaining members of the board, and the persons so appointed shall hold office until the next annual meeting of the stockholders.

Section 3. The Board of Directors shall elect a president, and vice-president from its members, and shall also elect a cashier, who may or may not be a stockholder of a member of the board of directors, and who shall also act as secretary of the corporation. It may also elect and employ such other officers and clerks as may be necessary to the transaction of its business, and shall fix the compensation of all officers and employees.

## Article VI

### Annual and Special Meetings of the Stockholders

Section 1. The annual meeting of the stockholders shall be held at the office of the corporation on the Second Tuesday in January of each year, beginning with the year 1912, at which time the stockholders shall elect a board of directors and transact such other business as may lawfully come before them.

Section 2. Special meetings of the stockholders may be called by the president, vice-president, or by a majority of the members of the board of directors, or by the holder or holders of a majority of the stock of the corporation. Ten (10) days notice of the time and place of such meeting shall be given by the cashier, or the person or persons calling such special meeting, by mailing a notice in writing to each stockholder, directed to his address as shown upon the books [fol. 27] of the corporation, which notice shall state the object of the meeting, and no business other than that named in the notice shall be transacted at such special meeting, unless all the stock of the corporation shall be represented, and no objection shall be made by any stockholder to the transaction of business other than that named in the notice.

Section 3. The voting at all stockholders meetings shall be by ballot, and each share of stock represented by the holder thereof, or by his proxy duly authorized in writing, shall be entitled to one vote.

## Article VII

### Provisional Directors

Until the first annual meeting of the stockholders, the following named persons shall be the directors of the corporation:

H. A. Kinney; P. O. Address, Woodbine, Iowa.
Lewis Haas; P. O. Address, Woodbine, Iowa.
Geo. H. Kibler; P. O. Address, Long Beach, Cal.
W. E. O'Connor; P. O. Address, Woodbine, Iowa.
C. C. Haas; P. O. Address, Woodbine, Iowa.

## Article VIII

The annual meeting of the board of directors shall be held on the Second Tuesday of January each year, immediately following the adjournment of the annual meeting of the stockholders, at which time it shall elect a president, vice-president and a cashier, and may elect or employ such other officers, clerks or employes as shall be deemed necessary for the transaction of the business of the corporation. [fol. 28] Until the first annual meeting of the Board of Directors, the following named persons shall be the officers of the corporation:

President, Lewis Haas; P. O. Address, Woodbine, Iowa.

Vice President, H. A. Kinney; P. O. Address, Woodbine, Iowa.

Cashier, C. C. Haas; P. O. Address, Woodbine, Iowa.

## Article IX

### Execution and Acknowledgment of Written Instruments

Section 1. All deeds, mortgages and instruments in writing affecting real estate which shall be made by the corporation shall be executed and acknowledged in the name of the corporation by the president or vice-president, and attested by the cashier, with the corporate seal thereto affixed.

Section 2. Releases of mortgages and other liens held by the corporation, and satisfaction thereof, may be made, executed and acknowledged by the president, vice-president or cashier of the bank.

Section 3. All other written instruments which may be made by the corporation shall be executed by such other officers or agents as the by-laws may designate.

## Article X

### Certificate of Stock

Section 1. The shares of stock of the corporation shall be issued only upon full payment of the sums represented by them, and shall be transferable only by assignment upon [fol. 29] the books of the corporation.

Section 2. The certificates of stock issued to the shareholders shall be signed by the president or vice-president, and attested by the cashier, and have the Corporate seal affixed thereto.

Article XI

Indebtedness

This corporation shall not contract or incur any debt or liability, except for deposits, and the necessary expenses of managing and transacting its business, and obligations incurred for the purpose of obtaining money with which to pay deposits.

Article XII

Exemption of Private Property

The private property of the stockholders shall be exempt from corporate liability, except to the extent and in the manner provided by the constitution and laws of the state.

Article XIII

By-Laws

The board of directors may, by a two-thirds vote, make and accept by-laws which are not in conflict with the laws of the State or these articles of incorporation, for the management of the property of the corporation, the transaction of its business and the regulation of its affair-, and may by a like vote alter or change such by-laws.

Article XIV

Amendment of Articles of Incorporation

These articles of incorporation may be amended at any regular meeting of the stockholders, or at a special meeting called for that purpose, by a two-thirds vote of the capital stock of the corporation.

[fol. 30] Article XV

This corporation may be dissolved prior to the time fixed in its articles of incorporation, by an affirmative vote of

its stockholders holding three-fourths of its capital stock at a meeting of the stockholders called for that purpose in the manner required by law, and these articles of incorporation; and in case of such dissolution its affairs shall be wound up in the manner provided by statute.

We, Lewis Haas and C. C. Haas, President and Secretary of said Corporation, do hereby certify the above to be a true and correct statement of the proceedings of the stockholders at the above named meeting, and that we have executed this instrument, and do hereby sign and acknowledge the same, for and on behalf of the said corporation, this 10th day of May, 1911.

Lewis Haas, President. C. C. Haas, Secretary.

(Duly acknowledged.)

---

EXHIBIT "3" OF EXHIBIT "A"

is an amendment to the Articles of Incorporation of the Woodbine Savings Bank under date of February 19, 1920, as follows:

Article Three of Articles of Incorporation of the Woodbine Savings Bank, is amended so as to read, the Capital Stock of this corporatin shall be increased from the present amount which is Thirty Thousand Dollars ($30,000.00) to Fifty Thousand Dollars ($50,000.00).

---

[fol. 31] EXHIBIT "3½" OF EXHIBIT "A"

is an amendment of the Articles of Incorporation of the Woodbine Savings Bank, under date of January 25, 1917, as follows:

Article V

Board of Directors and Officers

Section 1. The affairs of this corporation shall be conducted and managed by a board of Five (5) Directors, who shall be elected from the shareholders at the annual meeting of stockholders of the corporation, and shall hold of-

fice for the term of one year and until their successors are elected and qualified and have accepted office.

---

EXHIBIT "4" OF EXHIBIT "A"

is, as follows:

State of Iowa, Department of Banking, Des Moines

February 15, 1927.

Mr. Lewis Haas, Director, Woodbine Savings Bank, Woodbine, Iowa.

DEAR SIR: The report of the Examiner shows that the condition of the Woodbine Savings Bank necessitates an assessment on the capital stock of one hundred per cent (100%) being One Hundred Dollars ($100.00) per share;

Now, therefore, in compliance with the provisions of Section 9246, Code of Iowa, I, L. A. Andrews, Superintendent of Banking for the State of Iowa, do hereby order and direct that an assessment be made upon the several stock-[fol. 32] holders of said bank; namely, Woodbine Savings Bank located at Woodbine, Iowa, amounting to one hundred per cent (100%), being One Hundred Dollars ($100.00) per share of the stock held by each stockholder, and I further order and direct that said assessment be ordered by the Board of Directors and paid as provided by sections 9246, 9247 and 9248 of the Code.

In testimony whereof, I have hereunto set my hand and seal of office this fifteenth day of February, 1927.

L. A. Andrews, Superintendent of Banking. (Seal.)

---

EXHIBIT "5" OF EXHIBIT "A"

is as follows:

Woodbine, Iowa, March 10, 1927.

Board of Directors met on above date with the following officers present: Lewis Haas, W. E. O'Connor, Fred Powley and Geo. B. Hewitt, and passed the following resolution:

Resolution

Whereas, on February 15, 1927, the Superintendent of Banking of the State of Iowa sent his order to each of the Board of Directors of this bank, ordering and directing that an assessment be made upon the stock and stockholders of the Woodbine Savings Bank, Woodbine, Iowa, of 100%. Now, therefor-, be it resolved that an assessment of 100% be and the same is hereby levied on and against the stock and stockholders of the Woodbine Savings Bank, Woodbine, Iowa, and that notice thereof be given to each of the stockholders of said bank as provided by law.

On motion by Powley, second by Hewitt, the foregoing [fol. 33] resolution was adopted; by Roll Call, O'Connor, aye; Powley, aye; Hewitt, aye; Haas, aye.

Lewis Haas, Chairman. J. T. Hunt, Secretary.

---

EXHIBIT "6" OF EXHIBIT "A"

is, as follows:

March 15, 1927.

Mr. Amos Shriver, Marengo, Iowa.

DEAR SIR: As one of the stockholders of the Woodbine Savings Bank of Woodbine, Iowa, owning twenty-six shares of the capital stock of said bank of the par value of $100.00 per share, $50,000.00 as shown by an examination under the direction of the State Superintendent of Banking is impaired to the extent of 25%, and you are hereby further notified that the State Superintendent of Banking on February 15th, 1927, ordered the Directors of said Woodbine Savings Bank to make an assessment on all stock equal to 100% of its par value, or $100.00 per share, and you are further notified that in compliance with said order from the State Superintendent of Banking, said Board of Directors of the Woodbine Savings Bank, did on March 15, 1927, make an assessment of $50,000.00 and as the holder of twenty-six shares of stock, the amount due from you is $2600.00 for which amount you will please make settlement in conformity with the Statutes of Iowa, Code section 9246, 9247 and 9248.

In testimony whereof I have hereunto set my hand and affixed the seal of the corporation this 15th day of March, 1927.

[fol. 34] Lewis Haas, President.

Attest: Jason T. Hunt, Cashier.

Attached to said notice is the following:

STATE OF IOWA,
Harrison County, ss:

I, J. T. Hunt, being duly sworn, depose and say that I deposited the within notice in the Post Office at Woodbine, Iowa, addressed to the last known residence of the within named stockholder, all as shown by said notice, on March 14, 1927.

J. T. Hunt.

Subscribed and sworn to before me by the said J. T. Hunt this 16th day of March, 1927. Vera Farnsworth, Notary Public. (Seal.)

---

EXHIBIT "7" OF EXHIBIT "A"

is, as follows:

July 6, 1927.

Mr. Amos Shriver, Marengo, Iowa.

DEAR SIR: The examination of the bank under the direction of the Superintendent of Banking set out paper to be eliminated amounting approximately to 100% of the capital instead of 25% of the capital, as erroneously stated in my notice of March 15, 1927. The order for 100% assessment by the banking department was based upon the examiner's report and has been levied by the directors by proper resolution.

I trust you will take notice of the foregoing letter and govern yourself accordingly, I remain,

[fol. 35] Your truly, Lewis Haas, President.

Attest: J. T. Hunt, Cashier. (Seal.)

Attached to said notice is the following:

STATE OF IOWA,
Harrison County, ss:

I, J. T. Hunt, being first duly sworn, depose and say that I deposited the within notice in the Post Office at Woodbine, Iowa, addressed to the last *notice* of the within named stockholder, all as shown by said notice on July 6, 1927.

J. T. Hunt.

Subscribed and sworn to before me by said J. T. Hunt this 7th day of July, 1927. Vera Farnsworth, Notary Public.

---

EXHIBIT "8" OF EXHIBIT "A"

is as follows:

July 6, 1927.

Mr. Edward F. Knepper, Marengo, Iowa.

DEAR SIR: The examination of the bank under the direction of the Superintendent of Banking set out paper to be eliminated amounting approximately to 100% of the capital, instead of 25% of the capital, as erroneously stated in my notice of March 15, 1927. The order for 100% assessment by the banking department was based upon the Examiner's report and has been levied by the directors by proper resolution. I trust you will take notice of the fore-[fol. 36] going letter and govern yourself accordingly. I remain,

Yours truly, Lewis Haas, President.

Attest: J. T. Hunt, Cashier. (Seal.)

Attached to said notice is the following:

STATE OF IOWA,
Harrison County, ss:

I, J. T. Hunt, being first duly sworn, depose and say that I deposited the within notice in the Post Office at Woodbine, Iowa addressed to the last known residence of the within stockholder, all as shown by said notice on July 6, 1927.

J. T. Hunt.

Subscribed and sworn to before me by said J. T. Hunt this 7th day of July, 1927. Vera Farnsworth, Notary Public. (Seal.)

EXHIBIT "9" OF EXHIBIT "A"

is as follows:

Mr. Edward F. Knepper, Marengo, Iowa.

DEAR SIR: The examination of the bank under the direction of the Superintendent of banking set out paper to be eliminated amounting approximately to 100% of the capital instead of 25% of the capital, as erroneously stated in my notice of March 15, 1927. The order for 100% assessment by the banking department was based upon the examiner's report, and has been levied by the directors by proper resolution.

[fol. 37] I trust you will take notice of the foregoing letter and govern yourself accordingly. I remain,

Yours truly, Lewis Haas, President.

Attest: J. T. Hunt, Cashier. (Seal.)

Attached is the following:

STATE OF IOWA,
County of Iowa, ss:

I, J. T. Hunt, being first duly sworn, depose and say that I deposited the within notice in the Post Office at Woodbine, Iowa, addressed to the last known residence of the within named stockholder, all as shown by said notice on July 6, 1927.

J. T. Hunt.

Subscribed and sworn to before me by said J. T. Hunt this 7th day of July, 1927. Vera Farnsworth, Notary Public. (Seal.)

---

EXHIBIT "10" OF EXHIBIT "A"

is as follows:

March 15, 1927.

Mrs. Lucy Bladen, Marengo, Iowa.

DEAR MADAM; As one of the stockholders of the Woodbine Savings Bank of Woodbine, Iowa, owning six shares of the capital stock of said bank of the par value of $100 per

share, $50,000.00, as shown by an examination under the direction of the State Superintendent of Banking is im-
[fol. 38] paired to the extent of 25%, and you are hereby further notified that the State Superintendent of Banking on February 15, 1927, ordered the directors of said Woodbine Savings Bank to make an assessment on all the stock equal to 100% of its par value, or $100 per share, and you are further notified that in compliance with said order from the State Superintendent of Banking, said board of directors of the Woodbine Savings Bank did on March 15, 1927, make an assessment of $50,000.00 and as the holder of six shares of stock the amount due from you is $600 for which amount you will please make a settlement in conformity with the statutes of Iowa, Code sections 9246, 9247 and 9248.

In testimony where- I have hereto set my hand and affixed the seal of the corporation this 15th day of March, 1927.

Lewis Haas, President.

Attest: Jason T. Hunt, Cashier. (Seal.)

Attached is the following:

STATE OF IOWA,
Harrison County, ss:

I, J. T. Hunt, being first duly sworn, depose and say that I deposited the within notice in the Post Office at Woodbine, Iowa, addressed to the last known residence of the within named stockholder, all as shown by said notice on March 14, 1927.

J. T. Hunt.

Subscribed and sworn to before me by said J. T. Hunt this 16th day of March, 1927. Vera Farnsworth, Notary Public. (Seal.)

---

[fol. 39] EXHIBIT "11" OF EXHIBIT "A"

is as follows:

July 6, 1927.

Mrs. Lucy Bladen, Marengo, Iowa.

DEAR MADAM: The examination of the bank under the direction of superintendent of banking set out paper to be

eliminated amounting approximately to 100% of the capital instead of 25% of the capital, as erroneously stated in my notice of March 15, 1927. The order for 100% assessment by the banking department was based upon the examiner's report and has been levied by the directors by proper resolution.

I trust you will take notice of the foregoing letter and govern yourself accordingly. I remain,

Yours truly, Lewis Haas, President.

Attest: J. T. Hunt, Cashier. (Seal.)

Attached, is the following:

STATE OF IOWA,
Harrison County, ss:

I, J. T. Hunt, being duly sworn, depose and say I deposited the within notice in the Post Office at Woodbine, Iowa, addressed to the last known residence of the within named stockholders, all as shown by said notice on July 6, 1927.

J. T. Hunt.

Subscribed and sworn to before me by said J. T. Hunt this 7th day of July, 1927. Vera Farnsworth, No. [fol. 40] tary Public. (Seal.)

---

EXHIBIT "12" OF EXHIBIT "A"

is a letter dated March 15, 1927, addressed to Carl H. Knepper, Marengo, Iowa, and is identically the same as Exhibit "6" of Exhibit "A," and has the same affidavit attached and is signed identically the same.

---

EXHIBIT "13" OF EXHIBIT "A"

is a letter dated March 15, 1927, addressed to Edward F. Knepper, Marengo, Iowa, and is identically the same as Exhibit "6" of Exhibit "A" and has the same affidavit attached, and is signed identically the same.

EXHIBIT "14" OF EXHIBIT "A"

is as follows:

Woodbine, Iowa, Oct. 14, 1927.

Regular meeting of the Board of Directors was held in the Directors room on date above written with the following officers present: Lewis Haas, George B. Hewitt, and Fred Powley. Minutes of the last meeting were read and approved. Resolutions to borrow and rediscount notes at the Council Bluffs Savings Bank of Council Bluffs, Ia. and the Livestock National Bank of Omaha, Nebraska, were read and ordered spread on the minute books. The date of the sale of stock of the stockholders, who had not paid their assessments on this date, is fixed at 9 A. M. November 17, 1927, at the office of the Woodbine Savings Bank, Woodbine, Iowa, by the following:

[fol. 41] Resolution.

Whereas, the owners of the number of shares following their names, to-wit: Lucy Bladen, 6 shares; Carl H. Knepper, 3 shares; Edward F. Knepper, 4 shares; Amos Shriver, 26 shares, have failed to pay their assessments on the date fixed for payment of same.

Now, therefore, be it resolved that proceedings be taken to sell such stock as by law provided, and that November 17, 1927, at the hour of 9 A. M. at the office of Woodbine Savings Bank, Woodbine, Iowa, be and the same is hereby fixed as the date and place of the sale of said stock and that notice of such sale be given to each of the above named stockholders, as by law provided.

Moved by Powley, seconded by Hewitt, that the foregoing resolution be adopted and on roll call the vote was, as follows: Powley, Aye, Hewitt, Aye, Haas, Aye.

After general discussion it was moved by Hewitt and seconded by Powley that we adjourn. Carried.

Lewis Haas, Chairman. J. T. Hunt, Secretary.

is as follows:

Notice to Stockholders

To Geo. E. Morse, trustee; Amos Shriver, Carl H. Knepper, Lucy Bladen, G. M. Beardshear, attorney-in-fact for M. L. Dunlap, trustee; M. E. Shriver:

You and each of you are hereby notified that on the 6th day of July, 1927, an assessment of 100 per cent of the par [fol. 42] value of the capital stock held by you in the Woodbine Savings Bank, was ordered levied as provided by Section 9246 of the Code, and pursuant to said order notice was given to each stockholder in writing, signed by the President and attested by the Cashier under seal, and mailed as by said Section provided, and proof of mailing is now on file, and it now appearing that you and each of you have neglected to pay said assessment for more than ninety (90) days from the date of mailing such notice, and it having now been ordered by the Board of Directors that sufficient of the stock held by you and each of you be sold at public auction to make good the deficiency, and the time and place of sale having been fixed and determined upon;

Now, Therefore, you and each of you are notified that there is now due from

| | |
|---|---|
| Lucy Bladen, Marengo, Iowa | $ 600.00 |
| Carl H. Knepper, Marengo, Iowa | 300.00 |
| Edward F. Knepper, Marengo, Iowa | 400.00 |
| Amos Shriver, Marengo, Iowa | 2600.00 |

and that on this the 17th day of November, 1927, at the hour of 9 A. M. at the banking house of said Woodbine Savings Bank at Woodbine, Iowa, sufficient of the stock held by you and each of you will be sold at public auction to make good your deficiency upon the amount of your assessment.

Dated at Woodbine, Iowa, this 12th day of October, 1927

Woodbine Savings Bank. Lewis Haas, President. J. T. Hunt, Cashier. Fred Powley, Geo. B. Hewitt, Directors.

[fol. 43] Attached is the following return of service:

STATE OF IOWA,
Harrison County, ss:

I, J. T. Hunt, being first duly sworn, depose and say that I served the within and foregoing Notice to Stockholders of assessment on Geo. E. Morse, Trustee at Ladora, Iowa county, Iowa, by reading the same to him and handing him a true copy of the same on October 13, 1927; that I served said notice on Amos Shriver, Carl H. Knepper, Lucy Bladen, G. M. Beardshear, Attorney in fact for the heirs of Mary E. Misel, deceased at Marengo, Iowa county, Iowa, by reading said notice to them and each of them and handing to each of them a true copy of said notice on October 14, 1927; that I served said notice on M. L. Dunlap Trustee for Mrs. D. S. Dunlap, at Ackley, Hardin County, Iowa, and M. E. Shriver at Jefferson, Greene county, Iowa, by reading said notice to them and each of them and handing them and each of them a true copy of said notice on the 15th day of October, 1927.

J. T. Hunt.

Subscribed in my presence and sworn to before me by the said J. T. Hunt this 21st day of October, 1927.
J. A. Murray, Notary Public, Harrison County, Ia.

---

EXHIBIT "16" OF EXHIBIT "A"

is a notice to stockholders, identically the same as Exhibit "15" of Exhibit "A" and signed identically the same and has attached the following return of service:

[fol. 44] STATE OF IOWA,
Johnson County, ss:

I, F. L. Smith, Sheriff of said county, hereby certify and return that I received the within notice for service on the 22nd day of October, 1927, and that on the 24th day of October, 1927, at Iowa City Township, in said County, I served the within notice on Edward F. Knepper by offering to read the same to him, which he waived, and by delivering to him personally a true copy thereof.

F. L. Smith, Sheriff, by A. J. Fehrman, Deputy.

| | |
|---|---|
| Service | .50 |
| Copy | .25 |
| Mileage | .45 |
| Total | 1.20 |

EXHIBIT "17" OF EXHIBIT "A"

is as follows:

Notice

Notice is hereby given that 112 shares of stock of the undersigned bank will be sold at nine o'clock A. M. on the 17th day of November, 1927, at the Woodbine Savings Bank in the town of Woodbine, Iowa, to pay a 100% assessment, amounting to $11,200 due from stockholders of said bank.

Woodbine Savings Bank, by Lewis Haas, President.
by J. T. Hunt, Cashier.

Attached is the following return of publication:

I, A. C. Cahman, publisher of the Missouri Valley Times, a Daily and Weekly newspaper published in Harrison county, Iowa, solemnly swear that the foregoing notice [fol. 45] was published in said paper one consecutive week beginning on the 7th day of November, 1927, and ending on the — day of ——, 192-.

A. C. Cahman.

STATE OF IOWA,
Harrison County:

Subscribed and sworn to before me by A. C. Cahman this 14th day of Nov. 1927. Stantford N. Bird, Notary Public.

Plaintiff rests.

Defendant's Evidence

STATEMENT RE EXHIBITS 18, 19, 20 and 22

The defendant offers in evidence Exhibit "18," being a published copy of the house journal of the 41st G. A. of the State of Iowa, published by the State of Iowa.

Plaintiff waives preliminary proof, but objects to the offer on the ground it is immaterial and irrelevant; overruled, exception.

Exhibit "18" shows that the House of Representatives of the 41st G. A. of the State of Iowa, was composed of 108 members, and in the House of Representatives on the passage of Senate File No. 38, as amended, there was the vote of 64 affirmatives, 5 negatives and 39 absent or not voting.

The defendant offers in evidence Exhibit "19" being a published copy of the Senate Journal of the 41st G. A. of Iowa, published by the State of Iowa.

Plaintiff waives preliminary proof but objects to the offer on the ground it is immaterial and irrelevant. Overruled, exception.

[fol. 46] Exhibit "19" shows that in the Senate there were 50 duly elected, qualified and acting members of the Senate. That on the passage of Senate File 38 as amended in the Senate there were 28 affirmative votes, 9 negative votes and 13 absent or not voting.

It is agreed by and between the plaintiff and defendant that at the time the defendant became the owner of the capital stock of the plaintiff corporation, as agreed in the stipulation Exhibit "A" offered in evidence, that the same had at said time been paid for in full to the plaintiff.

It is agreed by and between the plaintiff and defendant that Exhibit "21" is the by-laws of the plaintiff corporation.

Defendant offers in evidence Exhibit "21"

Plaintiff objects to the same as immaterial, irrelevant and not within the issues, but no objection to preliminary proof is made. Overruled, exception.

Exhibit 21 contains no provision of any kind providing for any assessment of the capital stock of the plaintiff.

It is agreed that Exhibit "22" is the original certificate issued by the plaintiff to the defendant under date of June 8, 1925, for six shares of the capital stock of the plaintiff, and that said certificate was issued in lieu of and as representing the six shares of capital stock of the plaintiff and which the defendant became the owner of on the 14th day of February, 1917, and that there was issued by plaintiff to the defendant a certificate for all the stock owned by the defendant of the plaintiff's capital stock, and that each

[fol. 47] and all of said certificates were in form and wording identically the same as Exhibit "22," except as to the date and the number of shares.

Defendant offers in evidence Exhibit "22." Objected to as irrelevant and immaterial. No bearing on the issues in the case. Overruled, exception.

EXHIBIT "22"

is as follows:

State of Iowa

Number: 112. Shares: 6.

Woodbine Savings Bank, Woodbine, Iowa

Shares $100 Each

This is to certify that Amos Shriver is entitled to Six Shares of the Capital Stock of The Woodbine Savings Bank, of Woodbine, Iowa transferable only on the Books of the Bank in person or by attorney on the surrender of this Certificate. Not transferable by any Stockholder liable to this bank as principal debtor or otherwise without consent of the Board of Directors.

In witness Whereof the President and Secretary have hereunto subscribed their names and caused the Seal of this Bank to be affixed at Woodbine, Iowa, this 8th day of June, 1925.

Lewis Haas, President. Renzie E. Foglesong, Secretary.

Capital: $50,000.00

Defendant rests.
Both parties rest.

---

MOTION TO DISMISS

Comes now the defendant, and after both sides have rested, and before the case has been submitted to the court [fol. 48] and moves the court to dismiss this cause for the following reasons:

1st. That no valid assessment is shown by the evidence as against this defendant to have been made.

2nd. That the record fails to show that any notice of the claimed assessments, as provided by law, was given to the defendant.

3rd. That the record fails to establish that any notice of the sale, based on the assessment as claimed in this action, was given to the defendant.

4*rd*. That the record fails to show that any notice was published in a newspaper in the county of the plaintiff's place of residence as provided by law.

5th. For the reason that Section 9248-a-1 of the Code of 1927, under which this action is brought, is void in that it is inconsistent with Section 9235 and Section 9238 and 9246 of the Code of 1927.

6th. For the reason that Section 9248-2-1 of the Code of 1927, under which this section was brought and liability against the defendant sought to be established as against this defendant, does not apply, this defendant having been the owner of the capital stock of the plaintiff at and prior to the time of the passage of such act by the Legislature of this state.

7th. That Section 9248-a-1 of the Code of 1927 is unconstitutional and void, as applied to this defendant, for the reason that the amendment by the 41st General Assembly Chapter 181, which attempted to create personal liability against the stockholders was not passed by the constitu-
[fol. 49] tional required majority in each house of the Legislature, the State of Iowa requiring that such an act must be passed by two-thirds vote of each house of the General Assembly.

8th. For the reason that Section 9248-a-1 of the Code of 1927, if applied to the defendant and defendant's stock, is void for the reason that it impairs the terms of a contract existing between the defendant and plaintiff prior to the enactment of the amendment attempting to create liability against the stockholders.

9th. That Section 9248-a-1 of the Code of 1927, if applied to the defendant and stock of the defendant, is unconstitu-

tional and void, for the reason that it takes from the defendant vested rights which were in existence and had vested prior to the enactment of the 41*th* General Assembly of Iowa, the amendment to the law attempting to create personal liability against the owner of capital stock.

10th. For the reason under the law and records in this case there is no way in which a valid assessment could be made against the defendant on his capital stock by the plaintiff except and only by his consent and no such consent is established in this record.

11th. For the reason that Sections 9247, 9248 and 9248-a-1 of the Code of 1927, if applied to the defendant and as against the stock owned by the defendant, is unconstitutional and void in that they are coercing and attempting to take the property of the defendant away from him without his consent, which under the Constitution of the State of [fol. 50] Iowa and the Constitution of the United States is prohibited.

By agreement of parties the above motion may be considered and ruled upon by the court in the final decision of this cause.

---

On the 21st day of May, 1928, there was duly entered in said cause by the District Court of the State of Iowa in and for Iowa County the following Decision and Judgment, which was duly recorded in District Court Record 28 page 149 of the Office of the Clerk of the District Court of Iowa County, Iowa. Said

JUDGMENT

is as follows:

The above entitled cause was on the 12th day of April, 1928, same being one of the days of the regular April, 1928 Term of said court, by agreement of the parties tried to the court before H. D. Evans, one of the judges of the 8th Judicial District, a jury being waived; Bolter & Murray and Hatter & Harned appearing as attorneys for the plaintiff, and Wallace and Claypool appearing as attorneys for the defendant, and it was agreed in open court that said cause should be decided and judgment rendered in vacation

with the same force and effect as if in term time. Evidence was introduced by both parties, and at the close of said evidence defendant moved the court to direct a verdict in his favor upon grounds set forth in the record, ruling upon such motion being by agreement reserved until the final decision of this cause.

[fol. 51] Said cause having been tried, argued and submitted to the court, and the court having duly examined the files, pleadings, evidence and exhibits, and being now fully advised in the premises, finds:

That plaintiff was duly and legally incorporated as a savings bank under the laws of the State of Iowa on the 6th day of May, 1891 and at said time adopted articles of incorporation.

That on the 11th day of May, 1911 the franchise of plaintiff under its original articles having expired, plaintiff duly and legally reincorporated and reorganized as a savings bank under the laws of the State of Iowa, and at said time adopted amended and substituted articles of incorporation.

That on the 27th day of February, 1920, plaintiff duly and legally adopted an amendment to its articles of incorporation increasing its capital stock from $30,000 to $50,000.

That on the 26th day of January, 1917, plaintiff duly and legally adopted an amendment to its articles of incorporation and provided that the affairs of plaintiff corporation should be conducted and managed by a board of five directors.

That on the 15th day of February, 1927, the capital stock of plaintiff bank was impaired to the extent of 100% or $50,000, and that on said date the Superintendent of Banking of the State of Iowa so determined. That on February 15, 1927, said Superintendent of Banking addressed an order to plaintiff bank and to the several members of plaintiff's Board of Directors, requiring an assessment against the stock in plaintiff bank and fixing the amount thereof at 100% or $50,000. That said order was in writing and was [fol. 52] addressed to and received by plaintiff bank and by each of the five directors thereof on or about the 16th day of February, 1927.

That on March 10, 1927, the Board of Directors of plaintiff bank at a meeting duly and legally called passed and adopted a resolution levying an assessment of 100%

against the stock and stockholders of plaintiff bank and caused said deficiency to be made good by ratable assessment upon the stockholders for the amount of stock held by them, and directing that notice thereof be given to each of the stockholders as provided by law. That thereafter plaintiff gave the stockholders of said bank, including the defendant, certain notices in writing signed by the president and attested by the cashier of plaintiff bank under plaintiff's seal, by depositing said notices in the Post Office at Woodbine, Iowa, addressed to the stockholders, including defendant, at their last known residences; that said notices advised the stockholders of the said assessment, the entire sum to be raised, and the amount due from each stockholder, and one of said notices was duly received by defendant in the regular course of the United States mail.

That defendant failed, neglected and refused and still fails, neglects and refuses to pay the claimed assessment against him and against the stock belonging to him.

That on the 4th day of October, 1927, the Board of Directors of plaintiff bank at a regular meeting duly and legally called and held adopted a resolution to cause sufficient of the stock belonging to and held by defendant to be sold at public auction to make good the deficiency and fixing the [fol. 53] time and place thereof as the 17th day of November, 1927, at the office of plaintiff bank at Woodbine, Iowa. That plaintiff gave notice to all stockholders failing to pay the assessment above referred to, including the defendant, reciting the assessment made, the amount due thereunder from the respective stockholders, including the defendant, and the time and place of sale, that said notice was served personally upon defendant on October 14, 1927.

That on the 7th day of November, 1927, plaintiff caused to be published and there was published in the Missouri Valley Times, a newspapers of the county in which plaintiff bank is located, a notice of said sale, and that said notice was published in one issue of said newspaper on the 7th day of November, 1927.

That on the 17th day of November, 1927, at a public auction sale held at the banking house of plaintiff at Woodbine, Iowa, the stock owned and held by said stockholders not paying the assessment as aforesaid, including the defendant, was sold to the highest and best bidder; the twenty-six shares of stock belonging to defendant being

then and there sold for the sum of $1.00 per share, or a total of $26, which said amount was duly credited on said assessment, leaving a deficiency on said assessment on the stock held by defendant in the amount of $2574.

That all the stock owned and held by the stockholders in plaintiff bank who failed, neglected and refused to pay the assessment hereinbefore referred to, was sold on the 17th day of November, 1927, at the banking house of plaintiff in [fol. 54] Woodbine, Iowa, and that all of said stock was sold for $1.00 per share.

That defendant never attended any stockholders meetings of said bank and was given no notice of any stockholders meeting in connection with the said assessment and was given no notice of any stockholders' meeting in connection with the sale of defendant's stock. That subsequent to the year 1911 and prior to March, 1925, defendant was paid and accepted dividends on the stock in plaintiff bank held by him.

That at the time of the convening of the 41st General Assembly of Iowa there were 108 duly elected and qualified and acting members of the House of Representatives and 50 duly elected, qualified and acting members of the Senate of Iowa; that the final vote cast by the House of Representatives in connection with Senate File No. 38 as amended was as follows: 64 affirmatives; 5 negatives and 39 absent or not voting; that the final vote cast in the Senate of Iowa in connection with said Act known as Senate File No. 38 as amended was as follows: 28 affirmatives; 9 negatives and 13 absent or not voting, as shown by the Senate and House Journal published by the State of Iowa, it having been agreed that copies of such Senate and House Journal could be received in evidence in lieu of the original journals with the same force and effect as though the original of said journals were offered and received in evidence.

That defendant did on the 18th day of May, 1891 become the owner of 10 shares of the capital stock of plaintiff corporation, said stock being of the par value of $100 a share, [fol. 55], or a total par value of $1000, and that said defendant continued to own said 10 shares of stock in plaintiff corporation until November 17, 1927. That on the 16th day of April 1906, defendant became the owner of 10 shares of the capital stock of plaintiff corporation, said stock being of the par value of $100 a share or a total par value of

$1000, and that said defendant continued to own said stock until November 17, 1927. That on Feb. 14, 1917, defendant became the owner of six and one-sixth shares of the capital stock of plaintiff corporation and thereafter he was informed by plaintiff that the banking department of the State of Iowa was criticizing plaintiff in that a part of its bank stock was owned in fractional shares. That thereafter he sold one-sixth share of said stock, surrendering the certificate to plaintiff representing said six and one-sixth shares of stock and on the 8th day of June, 1925, in lieu thereof received a certificate from plaintiff bank for said six shares of stock of said bank of the par value of $100 a share, or a total par value of $600, and that said defendant continued to own said stock until Nov. 17, 1927. That when defendant became the owner of the respective shares of stock as aforesaid same was paid for in full.

The court further finds that there is nothing in the pleadings or evidence in this case to indicate when the capital stock in plaintiff bank became impaired by losses or otherwise and the court presumes and therefore finds that the impairing of said capital stock and the causes of such impairment occurred subsequent to the passage and taking effect of Chapter 181, Section 1 of the Acts of the 41st General [fol. 56] Assembly of Iowa, which said Act is now Section 9248-a-1 of the 1927 Code of Iowa.

The court further finds that the assessment required upon the stockholders of plaintiff bank, including the defendant, by the Superintendent of Banking of the State of Iowa as aforesaid, the action and resolution of the Board of Directors of said bank carrying into effect the order of the Superintendent of Banking and causing said assessment to be made; the notice of said assessment given to defendant and the return of service thereof; the action and proceedings of the directors causing the stock of defendant to be sold for non-payment of the assessment; the notices to defendant of the assessment, the time and place of sale, and the sale of said stock at public auction and the service thereof as appearing by the foregoing facts herein, and all proceedings in connection with said assessment upon defendant's stock, and the sale thereof at public auction, are in due and legal form, were conducted and had in the manner contemplated by law and are in compliance with Sections 9246, 9247 and 9248 of the 1927 Code of Iowa.

The court now having duly considered the motion of defendant to direct a verdict in his favor hereinbefore referred to and being fully advised, it is ordered that said motion be and the same is hereby overruled as to all grounds.

The court, therefore, finds that Section 9248-a-1 of the 1927 Code of Iowa, one of the statutes upon which plaintiff's cause of action is based is not vulnerable to any of the objections or defenses interposed by defendant in his answer as amended or during the trial of said cause, and that plaintiff is, therefore entitled to judgment against defend- [fol. 57] ant for the sum of $2574, together with interest at 6% per annum from Nov. 17, 1927, and for the costs of this action as prayed for in its petition.

It is Therefore ordered and adjudged that judgment be and same is hereby rendered against the defendant, Amos Shriver, and in favor of plaintiff, for the sum of $2574, with interest at 6% thereon from Nov. 17, 1927, nd for the costs of this action.

To all of which defendant excepts.

H. D. Evans, Judge.

May 21, 1928.

---

NOTICE OF APPEAL

The defendant perfected an appeal to the Supreme Court of the State of Iowa by serving upon the plaintiff, and the Clerk of the District Court of Iowa County, Iowa, a proper notice of appeal in said cause appealing from said judgment, decision and all rulings adverse to defendant to the Supreme Court of Iowa, all done on the 12 day of June, 1928, and which notice was on said date filed in the office of the Clerk of the District Court of Iowa County, Iowa.

---

CERTIFICATE OF ATTORNEYS

We hereby certify the foregong is a full, true and complete abstract of the pleadings, proceedings and testimony and all other matters of record in said cause, and constitutes a full and complete abstract of the entire record made in said cause in the lower court.

Wallace & Claypool, Attorneys for Appellant.

[fols. 58-62] NOTICE OF ORAL ARGUMENT

Notice is hereby given that on the submission of this case appellant will orally argue the same.

Wallace & Claypool, Attorneys for Appellant.

---

[fol. 63] [File endorsement omitted]

IN THE SUPREME COURT OF IOWA

[Title omitted]

ASSIGNMENTS OF ERROR—Filed August 25, 1928

1

The court erred in entering judgment against appellant for the reason that Sec. 9248-a1 Code of 1927 (Chap. 181 Acts 41 G. A.) does not apply to appellant because appellant became the owner and holder of his stock in appellee bank prior to the enactment of said statute. The statute should be given a prospective construction and when given such construction it does not apply to bank stock in existence prior to the passage of the statute. Aside from said statute there is no personal liability on holders of bank stock to pay an assessment thereon to rehabilitate impaired capital of the bank (Appl'ts Abst. page 56, line 28).

2

The court erred in overruling the 6th ground of appellant's motion to dismiss plaintiff's case for the reason that Sec. 9248-a1 Code of 1927 (Chap. 181 Acts 41 G. A.) does not apply because the appellant became the owner and holder of his stock in appellee bank prior to the enactment of said statute. Said statute should be given a prospective construction and when given such construction it does not apply [fol. 64] to bank stock issued and in existence prior to the time of passage of said statute. Aside from said statute there is no authority of law for a personal judgment against the owner of bank stock for failure to pay an assessment thereon to make good impaired capital of the bank (Appl'ts Abst. page 47, line 32, and Appl'ts Abst. page 56, line 23.)

3

The court erred in entering judgment against appellant for the reason that Sec. 9248-a1 Code of 1927 (Chap. 181 Acts 41 G. A.) as applied to appellant impairs the obligation of contract in violation of Sec. 10 Article 1 Constitution of the United States and Sec. 21 Article 1 Constitution of Iowa, because appellant was the owner and holder of his stock in appellee bank prior to the passage of said statute and said stock of appellant was fully paid up stock, and said statute as applied to appellant adds a new duty and obligation to the stockholder's contract existing between appellant and appellee not imposed by such contract when made. Aside from said statute there is no authority of law for a personal judgment against the owner of bank stock for failure to pay and assessment thereon to make good impaired capital (Appl'ts Abst. page 50, line 18).

[fol. 65]

4

The court erred in overruling the 8th ground of appellant's motion to dismiss plaintiff's case or direct a verdict for appellant, for the reason that Sec. 9248-a1 Code 1927 (Chap. 181 Acts 41 G. A.) as applied to appellant impairs the obligation of contract in violation of Sec. 10 Article 1 Constitution of the United States and Sec. 21 Article 1 Constitution of Iowa because appellant's stock was issued and in existence and appellant was the owner thereof prior to the passage of said statute and there is no authority of law aside from said statute for personal judgment against owner of bank stock for failure to pay assessment thereon (Appl'ts. Abst. page 49, line 5 as to motion; Appl'ts. Abst. page 56, line 23 for ruling).

5

The court erred in entering judgment against appellant for the reason that Section 9248-a1 Code of 1927, the statute under which the claimed liability of appellant to appellee is based, violates the Fourteenth Amendment to the Constitution of the United States and Section 9 Article 1 Constitution of Iowa as applied to appellant who was the owner and holder of his stock in appellee bank prior to the enactment [fol. 66] of said statute in that said statute deprives appellant of his property without due process of law, and

there is no other authority of law for a personal judgment against the owner of bank stock for an assessment to rehabilitate impaired capital of the bank (App'l't's Abst. page 50, line 14).

6

The court erred in overruling the 9th and 11th grounds of appellant's motion to dismiss plaintiff's case, or direct a verdict for appellant, made at the close of all the evidence, for the reason that Section 9248-a1 Code of 1927, the statute under which the claimed liability sought to be enforced against this appellant is based, if applied to appellant, the holder and owner of his stock in appellee bank prior to the enactment of said statute, violates the 14th Amendment to the Constitution of United States and Section 9 of Article 1 Constitution of Iowa by taking appellant's property without due process of law and there is no legal basis for personal judgment against the owner of bank stock for an assessment to rehabilitate impaired capital unless it be said statute (App'l't's Abst. page 49, line 12, page 49, line 27, and page 56, line 23).

7

The court erred in entering judgment against appellant [fol. 67] for the reason that Section 9248-a1 Code of 1927, as applied to appellant, the owner and holder of stock in appellee bank prior to the enactment of the said statute, impairs the obligation of the contract existing between appellant and appellee prior to the enactment of said statute in violation of Section 10 Article 1 Constitution of United States and Section 21 Article 1 Constitution of Iowa, and deprives appellant of his property without due process of law in violation of the 14th Amendment to Constitution of United States and Section 9 Article 1 Constitution of Iowa unless said statute is a proper exercise of the reserved power of the state and if an exercise of such reserved power said statute is void because not passed by a two-thirds vote of each branch of the General Assembly as required by Section 12 Article 8 Constitution of Iowa (App'l't's Abst. page 50, line 17).

8

The court erred in overruling the 7th ground of appellant's motion to dismiss plaintiff's case at the close of all the evidence for the reason that Section 9248-a1 Code of 1927 as applied to appellant, the owner and holder of stock in appellee bank prior to the enactment of said statute, im-
[fol. 68] pairs the obligation of the contract existing between appellant and appellee before the passage of said statute in violation of Sec. 10 Article 1 Constitution of United States and Sec. 21 Article 1 Constitution of Iowa, and deprives appellant of his property without due process of law in violation of the 14th Amendment to the Constitution of United States and Sec. 9 Article 1 Constitution of Iowa unless said statute be an exercise of the reserve power of the state, and if so, said statute is void and unconstitutional because not passed by a two-thirds vote of each branch of the General Assembly as required by Section 12 Article 8 Constitution of Iowa (App'l't's Abst. page 48, line 29 for 7th ground of motion; Appl'ts Abst. page 56, line 23 ruling).

9

The court erred in entering judgment against appellant for the reason that 9247, 9248, 9248-a1 Code of 1927 are inconsistent with Sections 9235, 9238, 9246 of the Code of 1927 and therefore said first three named sections of the code are void and give appellee no right to recover against appellant in this case (App'l't's Abst. page 50, line 17).

10

The court erred in overruling the 5th ground of appel-
[fol. 69] lant's motion to direct a verdict, or dismiss plaintiff's case at the close of all the evidence for the reason that Section 9248-a1 Code of 1927 is inconsistent with Sections 9235, 9238, 9246 Code of 1927 and said first named section is therefore void and gives appellee no right to recover in this action (App'l't's Abst. page 48, line 16; App'l't's Abst. page 56, line 23).

[fol. 70] [File endorsement omitted]

IN THE SUPREME COURT OF IOWA

OPINION—Filed June 24, 1929

[Title omitted]

Action by savings bank to recover from a stockholder upon an assessment to restore impaired capital of said bank. From a judgment in behalf of the plaintiff, the defendant appeals. Reversed.

Wallace & Claypool, of Williamsburg, for appellant.
Bolter & Murray, of Logan, and Hatter & Harned, of Marengo, for appellee.

FAVILLE, J.:

The appellee was incorporated as a savings bank, under the laws of this state, May 6, 1891. Twenty years later to wit, May 11, 1911, the bank was reincorporated. In February, 1920, the capital stock was increased from $30,000 to $50,000. The appellant was the owner of 26 shares of [fol. 71] stock in said bank. Ten of said shares were acquired about the time of the original incorporation, to wit, May 18, 1891. Ten more shares were acquired April 16, 1906. Six and one-sixth shares were acquired February 14, 1917. The certificate therefor was surrendered, and a new certificate for six shares, representing however the same stock, was issued June 8, 1925. On February 15, 1927, the capital stock of said bank was impaired to the extent of 100 per cent thereof, and on said date the superintendent of banking of the state determined that said capital stock was so impaired and ordered the board of directors of said bank to collect an assessment against the stock of said bank in the amount of 100 per cent. The proper proceedings were taken, notices were given of the assessment, and on or about the 4th day of October, 1927, due notice of the time and place of sale of appellant's stock was had, and on the 17th day of November, 1927, appellant's said shares of stock were duly offered for sale at public auction and were sold by the appellee for the sum of $1 per share, or a total of $26. This action is

brought to recover from the appellant the deficiency between the amount of said assessment and the said $26, to wit, the sum of $2,574. It is conceded by all parties that the said assessment is predicated solely on the pro- [fol. 72] visions of chapter 181 of the Acts of the Forty-First General Assembly, which became effective March 13, 1925, and which is now embodied in section 9248a1 of the Code of 1927. No question is raised but that the stock of the appellant was subject to an assessment by reason of impairment of the capital stock of the appellee bank. Chapter 29 of the Acts of the Twenty-Fifth General Assembly, providing for such assessment, became effective May 5, 1894. This statute was carried into the Code of 1897 in sections 1878, 1879 and 1880. Said sections are substantially embodied in the Code of 1927 in sections 9246-9250. These several statutes, as they existed prior to the enactment of Chapter 181 of the Acts of the Forty-First General Assembly, provided for an assessment to be made against shareholders of a savings bank to replace the impaired capital of such a bank. The sole provision, however, in the statutes as they then existed, for the enforcement of such an assessment, was that a sufficient amount of the capital stock held by a stockholder could be sold at public auction after proper notice to satisfy said assessment. It was under these statutory provisions that the appellant held his stock prior to the enactment of chapter 181 of the Acts of the Forty-First General [fol. 73] Assembly. Said statute placed a new liability upon the holder of said stock in the event of an assessment to replace impaired capital. Not only could the stock of the stockholder be sold to satisfy such an assessment, but a personal liability was created for the balance of said assessment above the amount for which the stock sold. Chapter 181 amended the existing statute by adding thereto the following: "Should the proceeds of a sale hereunder of all of the stock of any stockholder be insufficient to satisfy his entire assessment liability he shall be personally liable for the deficiency, which may be collected by suit brought in the name of the bank against such stockholder."

At the time the appellant became the owner of his shares of stock the then existing law imposed no personal liability on the stockholder to replace the impaired capital

of such a bank. Leach v. Arthur Savings Bank, 203 Iowa, 1052, 213 N. W. 772.

I. The validity of said chapter 181 as applied to the appellant is attacked on the ground that it impairs the obligations of appellant's contract as a stockholder in said bank. It is contended, however, by appellee that the statute in question is valid because of the reserved power which the Legislature has over corporations as found in section 12, article 8 of the Constitution of Iowa. Said section 12 [fol. 74] of article 8 is as follows: "Subject to the provisions of this article, the General Assembly shall have power to amend or repeal all laws for the organization or creation of corporations, or granting of special or exclusive privileges or immunities, by a vote of two-thirds of each branch of the General Assembly; and no exclusive privileges, except as in this article provided, shall ever be granted."

It is stipulated of record in this case that at the time of the convening of the Forty-First General Assembly of Iowa there were 108 duly elected and qualified members of the House of Representatives and 50 duly elected and qualified members of the Senate, and that upon the passage of the said act in question, in the House of Representatives there were 64 affirmative votes, 5 negative votes, and 39 absent or not voting, and that on the final vote cast in the Senate there were 28 affirmative votes, 9 negative votes, and 13 absent or not voting; so that, under the stipulation, it clearly appears that the act in question did not receive a two-thirds vote of each branch of the General Assembly at the time it was passed. Therefore, if the act in question be construed to be one that comes within the purview of section 12 of article 8 of the Constitution (a question which we do not determine), still said section of the Constitution has no applicability because the act was [fol. 75] not adopted by such a vote of the General Assembly as is required by said provision of the Constitution.

(1) II. It is contended that the act in question is valid because of the reserved power vested in the Legislature over corporations, as provided in section 8376 of the Code of 1927. At the time the appellee bank was organized and appellant acquired his stock therein, there was in force

section 1619, Code 1897 (Code of 1927 as section 8376). Said section is as follows:

"The articles of incorporation, by-laws, rules and regulations of corporations hereafter organized under the provisions of this title, or whose organization may be adopted or amended hereunder, shall at all times be subject to legislative control, and may be at any time altered, abridged or set aside by law, and every franchise obtained, used, or enjoyed by such corporation may be regulated, withheld, or be subject to conditions imposed upon the enjoyment thereof, whenever the general assembly shall deem necessary for the public good."

The so-called reserved power retained by the General Assembly by the constitutional provision, section 12, article 8, and by section 8376 of the Code of 1927, has been [fol. 76] adopted in various forms by the several states. These provisions are not identical in phraseology, in the various Constitutions and statutes. They are all the outgrowth of the decision of the Supreme Court of the United States in the famous Dartmouth College Case, 4 Wheat. 518, 4 L. Ed. 629. It was therein held that a charter from a state to a corporation was a contract within the meaning of the federal Constitution forbidding a state to pass any law impairing the obligation of contracts. The suggestion of Mr. Justice Story in the concurring opinion filed in that case in regard to a reserved power to amend articles of incorporation was the inspiration for the constitutional and statutory provisions referred to. They have been the fruitful source of much litigation, and of many divergent decisions. Said section 8376 first appeared in our statutes as section 1090 of the Code of 1873. It reappeared in Code of 1897 as section 1619, and in the Code of 1924 and the Code of 1927 as section 8376. There has been no change in said section through any of these Codes. The appellee bank was organized originally under chapter 60 of the Acts of the Fifteenth General Assembly, which was "an act to Provide for the Organization and Management of Savings Banks." The re-incorporation was by so-called "amended and substituted articles of incorporation" which were [fol. 77] executed on May 10, 1911, and they recited that the corporation was organized as a savings bank under chapters 10 and 12 of title 9 of the Code of 1897. Said sec-

tion 1619 of the Code of 1897 was a part of said title 9, and hence was applicable to said corporation at the time appellant acquired his stock. Also at said time sections 1878 and 1879 of the Code of 1897 were in effect providing for an assessment to restore impaired capital of a bank and for the sale of stock to satisfy such assessment.

With this situation before us we are confronted by two questions: (1) Is said chapter 181 (Code 1927, sec. 9248-a1) within the reserved power of the Legislature? And (2) is it applicable to the appellant? In St. John v. Building & Loan Ass'n, 136 Iowa, 448, 113 N. W. 863, 15 L. R. A. (N. S.) 503, we said:

"But a corporation under our laws has no absolute right to do business in this State, and its articles of incorporation are at all times subject to amendment by the General Assembly. Conditions may at any time be imposed upon a corporation and enforcement thereof assured by revoking their privileges in the event of noncompliance."

The terms of this statute are very broad. For the purposes of this case we assume that the "franchise" therein [fol. 78] referred to is the general franchise of the cooperation under which the corporation came into being. See State v. Iowa Telephone Co., 175 Iowa, 607, 154 N. W. 678, Ann. Cas. 1917E, 539. It is this franchise of the corporation that may be regulated or withheld, and which is subject to conditions imposed upon the enjoyment thereof by the General Assembly.

One of the conditions imposed by statute upon the enjoyment of the franchise which the appellee bank acquired at the time of its organization was that under certain conditions the board of directors of said bank should impose an assessment upon the stockholders for the purpose of restoring impaired capital. It was also provided by statute that, in the event a stockholder neglected or refused to pay his assessment, the board of directors of the bank should cause a sufficient amount of his stock to be sold to satisfy said assessment. The new statute provides an additional regulation to the effect that, if the sale of stock is insufficient to pay the assessment, the stockholder shall be personally liable for the deficiency and this liability is to be collected by suit brought "in the name of the bank."

The statute making said additional provision regarding

the collection of said assessment was supplementary to [fol. 79] the existing legislation and in keeping therewith. We think it was clearly within the reserved power of the Legislature under said section 8376. It pertained directly to the enjoyment of the franchise of the corporation, and it was within the power of the Legislature to impose such additional condition upon the enjoyment of its franchise by the corporation. It pertained directly to the subject of "conditions imposed upon the enjoyment" of its franchise by the corporation and was within the purview and scope of the reserved power.

As illustrating somewhat the authority of the Legislature over corporations under the reserved power, see Miners' Bank of Dubuque v. United States, 1 G. Greene, 553; Rodemacher v. Milwaukee & St. P. R. Co., 41 Iowa, 297, 20 Am. Rep. 592; Marshalltown Light, Power & Railway Co. v. City of Marshalltown, 127 Iowa, 637, 103 N. W. 1005; Sioux City Street Ry. Co. v. City of Sioux City, 78 Iowa, 367, 43 N. W. 224; Id., 138 U. S. 98, 11 S. Ct. 226, 34 L. Ed. 898.

(2) III. In the preceding division we have considered the statute in its relation to the corporation itself. A different and more perplexing question arises, however, when we consider the effect of the statute upon the rights of the appellant as a stockholder who acquired his stock prior [fol. 80] to the enactment of said statute. Granting the right of the General Assembly to enact the statute as affecting the corporation, the question still remains as to the effect of such legislation upon the rights of the appellant as an existing stockholder in said corporation. In Cook on Corporations (8th Ed.) Sec. 492, it is said: "The charter of a corporation having a capital stock is a contract between three parties, and forms the basis of three distinct contracts. The charter is a contract between the state and the corporation; second, it is a contract between the corporation and the stockholders; third, it is a contract between the stockholders and the state."

The power reserved in the General Assembly was the power to affect the contract between the state and the corporation. Under said reserved power this contract could be impaired without violating the federal Constitution respecting the obligation of contracts; but the question is, Could such reserved power on the part of the Legislature affect the existing contract between the corporation and

its stockholders by imposing additional obligations or liabilities upon the stockholders, as to them existing conditions?

At the time chapter 181 was enacted there was a contractual relation existing between appellant as a stockholder [fol. 81] and the corporation, as to the liability for an assessment to restore impaired capital. That relation between said parties may not be altered by the legislature as to the then existing situation. The liability of the stockholder for any impairment then existing could not be increased by legislative enactment without impairing the obligation of the contract between the corporation and the stockholder.

In St. John v. Building & Loan Ass'n, supra, we said: "It will be noted that the act itself does not attempt to change the contracts of members, but it does provide that, if the association failed to comply therewith on or before July 15, 1900, its authority to do business should cease, and its affairs should be wound up, and settlements made with all members according to the provisions of the act. Defendant then had the option of complying with the law and adjusting its outstanding contracts on the basis outlined in the act, or of going out of business and settling with its members upon the basis fixed in section 7 of the act (Acts 28th Gen. Assem. c. 69). It had no constitutional or other right to continue in business indefinitely or for any other time than the Legislature might see fit to permit. This is a fundamental principle of corporate law under the reserved power now generally given to the Legislature. [fol. 82] Bishop v. Brainerd, 28 Conn. 289; In re Brooklyn R. R., 72 N. Y. 245; ((Id.) 75 N. Y. 335, (Id.) 81 N. Y. 69). *Of course, the relation between the corporation and its stockholders cannot be changed or disturbed against their will.* All that the Legislature may do in this respect is to grant the power, and then it is for the corporation to accept or not as it pleases. Kenosha Co. v. Marsh, 17 Wis. 13." (The italics are ours.)

As bearing on the question, see, also, Garey v. St. Joe Mining Co., 32 Utah, 497, 91 P. 369, 12 L. R. A. (N. S.) 554; Union Pacific R. R. Co. v. United States, 99 U. S. 700, 25 L. Ed. 496; Central Pac. R. R. Co. v. Albert Gallatin, 99 U. S. 727, 25 L. Ed. 504; Hathorn v. Calef, 2 Wall. 10, 17 L. Ed. 776; New Orleans, etc., R. Co. v. Harris, 27 Miss.

517; Corning v. McCullough, 1 N. Y. 47, 49 Am. Dec. 287; Coffin v. Rich, 45 Me. 507, 71 Am. Dec. 559; Fairchild v. Masonic Hall Ass'n, 71 Mo. 526.

We therefore hold at this point that the statute could not and did not affect the liability of the appellant as a stockholder in the bank as to any impairment of stock that existed at the time said statute became effective.

(3) IV. However, a different rule must pertain as to any impairment that came into being after the passage of chapter 181. A new and additional personal liability is imposed thereby, but this can only have reference to an [fol. 83] assessment for impaired capital that is subsequently created. The statute looks to the future and not to the past. The statute as to said stockholder must be treated as prospective and not retroactive. We have recently had occasion to discuss the question of prospective and retroactive statutes in the case of Thomas v. Disbrow, 224 N. W. 36, filed March 5, 1929, and it is not necessary that we repeat the discussion or cite the authorities therein contained. Such a prospective statute is not violative of constitutional rights. Sherman v. Smith, 1 Black, 587, 17 L. Ed. 163; Williams v. Nall, 108 Ky. 21, 55 S. W. 706; Smathers v. Western Carolina Bank, 135 N. C. 410, 47 S. E. 893; Sleeper v. Goodwin, 67 Wis. 577, 31 N. W. 335; State v. Brown & Sharpe Mfg. Co., 18 R. I. 16, 25 A. 246, 17 L. R. A. 856; Pate v. Bank of Newton, 116 Miss. 666, 77 So. 601; Enterprise Ditch Co. v. Moffit, 58 Neb. 642, 79 N. W. 560, 45 L. R. A. 647, 76 Am. St. Rep. 122; Yoncalla State Bank v. Gemmill, 134 Minn. 334, 159 N. W. 798, L. R. A. 1917A, 1223; Norris Safe & Lock Co. v. Weaver, 81 Or. 670, 160 P. 807; Coffin v. Rich, 45 Me. 507, 71 Am. Dec. 559.

The cases are by no means free from conflict, but we think the foregoing rule is logical and consistent with constitutional requirements.

[fol. 84] (4) V. Under the rules herein announced the question arises as to whether or not the appellant is liable under the record in this case. Conceding that the appellant might be liable for an impairment of the capital stock that accrued after the enactment of chapter 181 and while appellant retained his stock, the question as to when the impairment occurred would be one of fact to be determined from the evidence in the case. There is no showing

as to when the impairment occurred except the stipulation "that on the 15th day of February, 1927, the capital stock of plaintiff bank was impaired to the extent of 100% or fifty thousand dollars." There is no presumption as to when said impairment was in fact created, and the record is silent in regard thereto.

Under the record we think the appellee failed to establish any liability on the part of the appellant for the deficiency in the assessment sued upon. It therefore follows that the judgment of the district court must be, and it is, reversed.

Evans, Stevens, Kindig, and Wagner, JJ., concur.

---

[fol. 85] IN THE SUPREME COURT OF IOWA

[Title omitted]

ORDER GRANTING REHEARING—Filed June 23, 1930

Petitions for rehearing of both sides having been fully considered by the Court are granted. It is ordered by the Court that this cause be resubmitted in print at the September, 1930, Term of this Court with cases from the Eighth Judicial District.

[File endorsement omitted.]

---

[fol. 86] [File endorsement omitted]

IN THE SUPREME COURT OF IOWA

[Title omitted]

OPINION—Filed April 10, 1931

This action was brought by the plaintiff to recover from the defendant, a stockholder, upon an assessment against such stockholder to restore the impaired capital of said bank, under the provisions of Section 9248.a1 of the 1927 Code. A judgment was entered in plaintiff's favor and the defendant appeals therefrom.

Affirmed.

[fol. 87] KINDIG, J.:

On May 6, 1891, the plaintiff-appellee was incorporated as a savings bank under the laws of Iowa. Thereafter, at the expiration of the charter thus granted, the appellee was re-incorporated May 11, 1911. The capital stock of the appellee bank was increased in February, 1920, from $30,000 to $50,000. At that time the defendant-appellant owned 26 shares of this stock.

Appellant's stock was obtained upon three different occasions as follows: 10 shares on May 18, 1891; 10 shares on April 16, 1906 and 6 1/6 shares on February 14, 1917. For some reason there was later a reissuance of the certificate for the 6 1/6 shares, and the amount reduced to 6 shares. Later the appellee bank's capital stock became impaired to the extent of 100 per cent, and, on February 15, 1927, the state banking superintendent ordered an assessment to restore the stock's value. Consequently the proper proceedings were taken and the assessment duly made. Then, according to law, appellant's stock was sold November 17, 1927, for the sum of one dollar per share, or a total of $26.00. This action was brought for the purpose of recovering from the appellant the deficiency, due under the assessment against him, after applying the said $26.00. [fol. 88] In other words, the amount demanded from the appellant by the appellee is $2,574. After a hearing the district court found against the appellant and gave appellee judgment for the amount claimed.

There is no question raised concerning the non-liability of appellant for the assessment to restore the value of the bank's stock. But it is claimed by appellant that his liability ceased when his stock was sold; that is to say, appellant contends that he, under the state and federal constitutions, cannot be made liable personally for the deficiency above named. The basis for appellant's argument in this regard is that under the Iowa statutes, in existence when the stock was purchased, there was no personal liability for the assessment; while now, under the amended statutes there is a personal liability. It is the personal liability that appellee seeks to enforce here. Therefore, appellant maintains that his contract will be impaired if the personal liability is enforced against him. An impairment of contract is not permitted under the state and fed-

eral constitutions, and the primary question for determination here is whether or not the personal liability sought to be enforced is an impairment of appellant's contract under the constitutional provisions.

[fol. 89] Apparently this legislation first appeared in Chapter 29, Acts of the Twenty-Fifth General Assembly, which became effective May 5, 1894. Such legislation was later codified and became sections 1878, 1879, and 1880 of the 1897 Code. Those sections of the 1897 Code are now substantially embodied in Sections 9246 to and including 9250 of the 1927 Code. For convenience, the foregoing provisions of the 1927 Code are here set forth:

"9246. Should the capital stock of any state or savings bank become impaired by losses or otherwise, the superintendent of banking may require an assessment upon the stockholders, and shall address an order to the several members of the board of directors of such bank, fixing the amount of assessment required."

"9247. The board of directors shall, within thirty days after the receipt of such order, cause such deficiency to be made good by a ratable assessment upon the stockholders for the amount of stock held by them, by giving such stockholders notice in writing, signed by the president or vice president, attested by the cashier or secretary of the bank, under its seal, if it have one, and deposited in the post office, addressed to the last known residence of the stockholders, [fol. 90] proof thereof to be made by the affidavit of the person so making the deposit, which notice shall state the entire sum to be raised, and the amount due from the addressed stockholder."

9248. "Should any stockholder neglect or refuse to pay his assessment within ninety days from the date of mailing notice thereof, the board of directors shall cause a sufficient amount of the capital stock held by such stockholder to be sold at public auction to make good the deficiency, after giving ten days' notice thereof by personal service or by posting the same in the bank, and publishing it in some newspaper of the county in which the bank is located, which notice shall recite the assessment made, the amount due thereunder from the stockholder, and time and place of sale;

proof of all which may be made in the manner provided in the preceding section."

About the foregoing statutory provisions the appellant makes no complaint, but he does attack Section 9248-a1 of the 1927 Code, which reads as follows:

"Should the proceeds of a sale under the preceding section of all of the stock of any stockholder be insufficient to [fol. 91] satisfy his entire assessment liability he shall be personally liable for the deficiency, which may be collected by suit brought in the name of the bank against such stockholder."

Said last-named statute was enacted March 13, 1925 by the Forty-First General Assembly, as shown by Chapter 181 of the acts thereof. Because Section 9248-a1, aforesaid, was not in existence when appellant purchased his stock in the appellee bank, he argues that his contract with the state and with the bank's other stockholders cannot be controlled by the new legislation. Under the contract arising through the old statutory provisions, appellant says that his stock could be appropriated for the purpose of paying the assessment, but that he was not personally liable therefor. See Leach vs. Arthur Savings Bank, 203 Iowa, 1052. Hence, because the new statute authorizes a personal liability, appellant contends that his contract aforesaid is changed and thereby impaired. Such impairment, appellant insists, is not avoided under the reserve power of the Iowa Constitution and the statutes enacted in connection therewith. That reserve power is set forth in section 12, Article 8 of the Iowa Constitution, as follows:

"Subject to the provisions of this article, the General Assembly shall have power to amend or repeal all laws for the [fol. 92] organization or creation of corporations, or granting of special or exclusive privileges or immunities, by a vote of two-thirds of each branch of the General Assembly; and no exclusive privileges, except as in this article provided, shall ever be granted."

Thereunder the legislature of this state adopted the following statute, set forth as section 1619 of the 1897 Code:

"The articles of incorporation, by-laws, rules and regulations of corporations hereafter organized under the provisions of this title, or whose organization may be adopted or amended hereunder, shall at all times be subject to legislative control, and may be at any time altered, abridged, or set aside by law, and every franchise obtained, used or enjoyed by such corporation may be regulated, withheld, or be subject to conditions imposed upon the enjoyment thereof, whenever the general assembly shall deem necessary for the public good."

Those provisions contained in section 1619 of the 1897 Code are substantially the same as the ones embodied in section 1090 of the 1873 Code. So, when the appellee bank was incorporated, the foregoing constitutional and statu- [fol. 93] tory provisions were operative. The principles announced in the well-known Dartmouth College Case, therefore, are not applicable to Iowa Corporations within the realm of the foregoing reserve power. Appellant, however attempts to avoid the reserve power doctrine by arguing that the assessment liability created by Section 9248-a1 is not within such reservation. To illustrate, appellant claims that there is a distinction between the assessment in question and an assessment imposed for liquidation purposes. A line of demarcation appears, appellant urges, because, on the one hand, the state granted the stockholder freedom from the corporate debts to the extent only of the assessment for liquidation purposes; while, on the other, the state granted the stockholder nothing, but imposed upon him a liability for the purpose of restoring the value of impaired stock. See: Garey vs. St. Joe Mining Company, 91 Pac. 369; Yoncalla State Bank vs. Gemmil, 159 N. W. 798 (Minn.); County of Santa Clara vs. Southern Pacific, 13 Fed. 722; Central Pacific R. R. Co. vs. Albert Gallatin, 99 U. S. 727.

Because the state granted a concession to the stockholder when it freed him from liability for the corporate debts, appellant concedes that such grant may be entirely [fol. 94] withdrawn and the stockholder compelled to bear a greater liability for the debts. See Williams vs. Nall, 55 S. W. 706; Walsh vs. Shanklin, 31 L. R. A. (N. S.) 365, 102 S. W. 291; Whitman vs. National Bank, 176 U. S. 559; Sherman vs. Smith, 1 Black, 587; Smathers vs. West-

ern Carolina Bank, 47 S. E. 893; Sleeper vs. Goodwin, 31 N. W. 335; State vs. Brown & Sharpe Mfg. Co., 25 A. 246; Pate vs. Bank of Newton, 77 So. 601; Enterprise Ditch Co. vs. Moffit, 79 N. W. 560 (Nebr.); Norris Safe & Lock Co. vs. Weaver, 160 Pac. 807; Coffin vs. Rich, 71 Am. Dec. 559.

Yet, because Section 9248-a1 of the 1927 Code does not withdraw a grant, but rather extends a liability, appellant maintains that the same is not within the reserve power above mentioned, and therefore falls within the principles announced in the famous Dartmouth College case. As to whether appellant is right about this, we do not now decide. His contention in this regard can in any event find support only in the proposition that before section 9248-a1 of the 1927 Code was adopted, the stockholders' contract denied a personal liability for the assessment after his stock was applied thereon. Assuming, without deciding, that we determined that contention in accordance with appellant's claim in Leach vs. Arthur Savings Bank (203 [fol. 95] Iowa, 1052), supra, nevertheless appellant has not thereby shown that section 9248-a1 above named, is unconstitutional and void.

Returning again to section 9246 of the 1927 Code, it is found that the legislative provision there is:

"Should the capital stock of any state or savings bank become impaired by losses or otherwise, the superintendent of banking may require an assessment *upon the stockholders* (the italics are ours) * * *."

The assessment plainly is not upon the stock, as such, but rather upon the stockholder personally. If, under section 9246 above-quoted, the assessment is upon appellant individually, then section 9248-a1 in no way changes such individual liability. Originally, under the old statute, the assessment was against the stockholder and not against the stock. Likewise, under the amendment the assessment is still against the stockholder. According to the original statute, the stockholder was personally and primarily liable for the assessment, and section 9248 and its predecessors had to do only with the remedy and nothing else. Then, assuming that the only remedy originally made for the collection of the assessment was to confiscate the stock-

holder's stock, nevertheless, so far as the remedy was sufficient, the stockholder was personally liable for the assessment. This burden was cast upon the stockholder himself, [fol. 96] even though the only remedy to enforce the obligation was by the sale of the stock. Consequently, appellant's obligation in the premises had not been increased. He was always obligated to pay the assessment. Of course, if he did not pay, the only remedy under the statute was to sell his stock; yet the obligation to pay was there just the same. Now, under the new legislation, the stockholder's liability has not been increased, but rather the remedy for enforcing that obligation has been changed. Were the remedy a part of appellant's contract, a change thereof would amount to an impairment. Barnitz vs. Beverly, 163 U. S. 118; Conley vs. Bartin, 260 U. S. 677.

Obviously in the case at bar, however, we are not confronted with a case where the remedy became a part of the contractual obligation. There is not a syllable in the statutory contract which in any way indicates that the remedy is a part of the agreement. It was not said by the legislature that there could be no other or different remedy. Hence it was perfectly proper for the law making body to adopt section 9248-a1 of the 1927 Code, because such amendatory legislation pertained to the remedy only. The purpose of this legislative enactment was to afford a more appropriate remedy for an obligation already existing against [fol. 97] appellant. Ever since becoming a stockholder of the appellee bank, he was obligated to pay any legal assessment made for the purpose of repairing the capital stock. This new legislation simply recognized that obligation and afforded a more complete remedy to enforce the same. No new obligation was created by the amendment, but rather the old was recognized and a better way to enforce it provided. Such action of the legislature in no way impairs the obligation of the contract. Conley vs. Barton (260 U. S. 677), supra; Johnson vs. Libby, 88 Atl. 647 (Me.); Brotherhood of American Yoemen vs. Mans. 206 Pac. 403 (Ariz.); Barton vs. Conley, 112 Atl. 670 (Me.); Perkins vs. Coffin, 79 Atl. 1070 (Conn.); Waggoner vs. Flack, 188 U. S. 595; Henley vs. Myers, 215 U. S. 373; Hill vs. Merchants' Mutual Insurance Co., 134 U. S. 515; Bernheimer vs. Converse, 206 U. S. 516; Lynch vs. Jacobson, 184 Pac. 929 (Utah). See Barnitz vs. Beverly (163 U. S. 118), supra. A

few brief quotations from some of the foregoing cases will elucidate the thought.

It was said in Bernheimer vs. Converse (206 U. S. 516), supra:

"There is a broad distinction between laws impairing the obligation of contracts and those which simply undertake to give a more efficient remedy to enforce a contract already [fol. 98] made."

Again in Henley vs. Myers (215 U. S. 373), supra, it is declared:

"Equally without merit is the contention that the statute of 1899 impaired the obligations of the stockholder's contract, in that it substituted for individual actions against them a suit in equity by a receiver appointed after judgment against the corporation. In becoming stockholders, the defendants did not acquire a vested right in any particular mode of procedure adopted for the purpose of enforcing their liability as stockholders. It is a well established doctrine that mere methods of procedure in actions on contract, that do not affect the substantial rights of parties, are always within the control of the state. It is to be assumed that parties make their contracts with reference to the existence of such power in the state."

Likewise in Waggoner vs. Flack (188 U. S. 595), supra, similar language is used as follows:

"*There was no promise or contract expressed in the statute that the state would not enlarge the remedy or grant* [fol. 99] *another on account of the purchaser's violation of his contract, and we think no such contract is to be implied.* (The italics are ours.) A purchaser of lands at the time Phillips purchased had no right to assume that the state would not alter the law in the future so far as to give it another and better or a quicker remedy for a violation of his contract by the purchaser than existed at the time the purchase was made. To enact laws providing remedies for a violation of contracts, to alter or enlarge those remedies from time to time as to the legislature may seem appropriate, is an exercise of sovereignty, and it cannot be supposed that the state in a case like this, contracts, in a public act of its legislature, to limit its power in the future, even

if it could do so, with or without consideration, unless the language of the act is so absolutely plain and unambiguous as to leave no room for doubt that its true meaning amounts to a contract by it to part with its power to increase the effectiveness of existing remedies as against those who purchase lands while the act remains alive. No such language is to be found in the act in question, and non- ought to be implied."

[fol. 100] Also the Arizona Court, in Brotherhood of American Yoemen vs. Manz (206 Pac. 403), supra, reading on page 406, laid down a similar doctrine in the following language:

"We understand the rule to be that parties have no vested right in particular remedies or modes of procedure, and that legislatures may change existing remedies or prescribe new modes of procedure without impairing the obligation of contracts, provided an efficacious remedy remains for its enforcement."

To the same effect is the following pronouncement in Johnson vs. Libby (88 Atl. 647), supra, reading on page 649:

"Its (the amendment to a statute) only purpose and effect was to provide a different remedy, a different course of procedure, by which the shareholders' liability could be enforced. The legislature has power to modify or change a remedy, provided no substantial right is thereby impaired. *And a shareholder in a corporation has no vested right in a particualr remedy by which his liability as such may be enforced against him.* (The italics are ours.) A change of remedy, whereby no substantial right is affected, is not obnoxious to the fundamental law which forbids the impairment of contracts."

[fol. 101] Thus it appears that the Supreme Court of the United States on many occasions has emphatically declared that a stockholder in a corporation ordinarily has no vested right in a remedy and therefore such remedy may be changed without impairing the obligation of contract. Not only has that doctrine been announced by the Supreme Court of the United States, but likewise it has been declared by practically every state in the union. As before seen, appellant's contract in the case at bar did not give

him a vested right in any particular remedy. There is no language in the statutes under consideration which indicates in any way that the remedy should not be changed. According to the statute, the assessment in question is against the stockholder himself. That is so because of the express language used by the law-making power, as will be seen by referring to the statutes above-quoted.

Conceding, without deciding, that under the original statute, the remedy was limited to the confiscation of the stock, yet that remedy, such as it was, arose for the purpose of enforcing a personal liability against the stockholder. Resultantly the new legislation also increases the remedy for the purpose of enforcing the same personal liability against the stockholder. Therefore, section 9248-a1 of the 1927 [fol. 102] Code is not unconstitutional and void for it does not impair the obligation of a contract under the state and federal constitutions.

The judgment and decree of the district court should be, and hereby is, affirmed.

Affirmed.

Faville, C. J. Stevens, Morling, and Wagner, J.J., concur.

Evans, Albert, and Grimm, J.J., dissenting, as follows:

We disagree with the majority opinion.

The appellee was incorporated as a savings bank, under the laws of this state, May 6, 1891. Twenty years later, to wit, May 11, 1911, the bank was reincorporated. In February 1920, the capital stock was increased from $30,000 to $50,000. The appellant was the owner of 26 shares of stock in said bank. Ten of said shares were acquired about the time of the original incorporation, to wit, May 18, 1891. Ten more shares were acquired April 16, 1906. Six and one-sixth shares were acquired February 14, 1917. The certificate therefor was surrendered, and a new certificate for six shares, representing however the same stock, was issued June 8, 1925. On February 15, 1927, the capital stock of said bank was impaired to the extent of 100 per cent thereof, and on said date the superintendent of bank- [fol. 103] ing of the state determined that said capital stock was so impaired and ordered the board of directors of said bank to collect an assessment against the stock of

said bank in the amount of 100 per cent. The proper proceedings were taken, notices were given of the assessment, and on or about the 4th day of October, 1927, due notice of the time and place of sale of appellant's stock was had, and on the 17th day of November, 1927, appellant's said shares of stock were duly offered for sale at public auction and were sold by the appellee for the sum of $1 per share, or a total of $26. This action is brought to recover from the appellant the deficiency between the amount of said assessment and the said $26, to wit, the sum of $2,574. It is conceded by all parties that the said assessment is predicated solely on the provisions of Chapter 181 of the Acts of the Forty-first General Assembly, which became effective March 13, 1925, and which is now embodied in section 9248-a1 of the Code of 1927. No question is raised but that the stock of the appellant was subject to an assessment by reason of impairment of the capital stock of the appellee bank. Chapter 29 of the Acts of the Twenty-fifth General Assembly, [fol. 104] providing for such assessment, became effective May 5, 1894. This statute was carried into the Code of 1897 in sections 1878, 1879, and 1880. Said sections are substantially embodied in the Code of 1927 in sections 9246-9250. These several statutes, as they existed prior to the enactmnt of chapter 181 of the Acts of the Forty-First General Assembly, provided for an assessment to be made against shareholders of a savings bank to replace the impaired capital of such a bank. The sole provision, however, in the statutes as they then existed, for the enforcement of such an assessment, was that a sufficient amount of the capital stock held by a stockholder could be sold at public auction after proper notice to satisfy said assessment. It was under these statutory provisions that the appellant held his stock prior to the enactment of chapter 181 of the Acts of the Forty-First General Assembly. Said statute placed a new liability upon the holder of said stock in the event of an assessment to replace impaired capital. Not only could the stock of the stockholder be sold to satisfy such an assessment, but a personal liability was created for the balance of said assessment above the amount for which the stock sold. Chapter 181 amended the existing statute by adding thereto the following: "Should the proceeds of a

sale hereunder of all of the stock of any stockholder be [fol. 105] insufficient to satisfy his entire assessment liability he shall be personally liable for the deficiency, which may be collected by suit brought in the name of the bank against such stockholder."

At the time the appellant became the owner of his shares of stock the then existing law imposed no personal liability on the stockholder to replace the impaired capital of such a bank, Leach v. Arthur Savings Bank, 203 Iowa 1052.

Preliminary to our discussion we may state briefly the nature and scope of the questions in controversy.

The contention of the defendant-stockholder presents two alternatives:

(1) That chapter 181 does not in terms purport to be retroactive or to apply to contracts existing prior to its enactment; that it is presumptively prospective and not retroactive unless the contrary appear from its express terms.

(2) That if it be held that such chapter does by its terms purport to apply to all existing stockholders, including the defendant as a prior existing stockholder, then the statute is unconstitutional in that it impairs the obligation of a contract.

For the plaintiff-appellee, it is contended that said statute does purport to apply to all existing stockholders; that it is not unconstitutional by reason of its application to [fol. 106] existing stockholders because the liability imposed upon the defendant by the amending chapter 181 is precisely the same as that already existing under the provisions of sections 9246 and 9248 and that no additional burden is therefore imposed upon the defendant; that the same is not unconstitutional for the further reason that the amending chapter was enacted pursuant to power reserved by the Legislature under the provisions of section 8376; that the enforcement of the assessment pursuant to chapter 181 is the fair equivalent of enforcing the provisions of section 9251, which imposes a superadded liability upon stockholders for the payment of corporate debts; that the enforcement of one of these remedies is indirectly an enforcement of the other. The foregoing indicates the general field of debate.

I. Appellant urges that we first determine categorically, upon the interpretation of the language of chapter 181, whether it purports to be prospective only or retroactive also. If by its terms it be deemed to be only prospective in purpose, then the question of its constitutionality is thereby eliminated and the appellant is entitled to prevail upon the face of the statute. The problem presented however is not so simple as the appellant thus makes it. The question of interpretation is interlocked with the question of constitutionality. The volume of the argument is upon that ques- [fol. 107] tion. So far as the mere terms of the statute are concerned, they are quite non-committal. They might be applied with equal plausibility to a retroactive statute as to a prospective one. In such a case, the presumption would favor the prospective construction. On the other hand this chapter is a mere amendment of an existing statute. This would invite a construction that would give the amendment as broad an application as the existing statute itself. If a retroactive interpretation of the statute would render it unconstitutional, then that fact would of itself become a controlling reason why such interpretation should not be adopted. In that sense the question of constitutionality and the question of interpretation become parts of the same thing—the one being dependent upon the other. We shall therefore first consider the question of constitutionality on the assumption that the statute by its terms purports to be retroactive in its operation and to apply to all existing stockholders regardless of the fact that they had acquired their rights as such stockholders prior to the enactment of chapter 181:

The relation of a stockholder to his corporation is contractual. His legal status is succinctly stated in Cook on Corporations (8th Ed.) paragraph 492 as follows:

[fol. 108] "The charter of a corporation having a capital stock is a contract between three parties, and forms the basis of three distinct contracts. The charter is a contract between the state and the corporation; second, it is a contract between the corporation and the stockholders; third, it is a contract between the stockholders and the state."

To the foregoing might be added a fourth aspect, viz: that it is a contract as between the stockholders themselves. The stockholder becomes a party to the contract by his pur-

chase of the stock. The relation thus created is purely voluntary on his part. His volition being exercised, he becomes bound to all the obligations expressed in the contract and imposed upon him by existing law. On the other hand he becomes entitled to all the benefits of the contract whether they exist at present or accrue in the future. Generally speaking his obligation thus assumed may not be enlarged against his consent. The defendant herein had acquired all his stock in the corporation long prior to the enactment of chapter 181 under consideration. Under his contract he bound himself to pay to the corporation the full par value of the stock purchased. In other words he agreed to devote to the enterprise the amount of capital specified in his purchase. By virtue of the existing statute 9248 he is deemed to have consented also to the sale of his [fol. 109] stock by the corporation in the event it became necessary to do so in order to restore any impairment of capital. This comprises his full undertaking as between him and his corporation. We need not here consider the question of his liability to creditors under Section 9251. His relation to the corporation creditors is not involved herein.

In St. John v. Building & Loan Ass'n, 136 Iowa 448, we said:

"It will be noted that the act itself does not attempt to change the contracts of members, but it does provide that if the association failed to comply therewith on or before July 15, 1900, its authority to do business should cease, and its affairs should be wound up, and settlements made with all members according to the provisions of the act. Defendant then had the option of complying with the law and adjusting its outstanding contracts on the basis outlined in the act, or of going out of business and settling with its members upon the basis fixed in section 7 of the act (Acts 28th G. A. c 69). It had no constitutional or other right to continue in business indefinitely or for any other time than the Legislature might see fit to permit. This is a fundamental principle or corporate law under the re- [fol. 110] served power now generally given to the Legislature. Bishop v. Brainerd, 28 Conn. 289; In re Brooklyn R. R., 72 N. Y. 245; (Id.) 75 N. Y. 335, (Id.) 81 N. Y. 69. *Of course, the relation between the corporation and its stockholders cannot be changed or disturbed against their*

*will.* All that the Legislature may do in this respect is to grant the power, and then it is for the corporation to accept or not as it pleases. Kenosha Co. v. Marsh, 17 Wis. 13." (The italics are ours.)

As bearing on the question, see also, Garey v. St. Joe Mining Co., 32 Utah, 497, 91 P. 369, 12 L. R. A. (N. S.) 1554; Union Pacific R. R. Co. v. United States, 99 U. S. 700, 25 L Ed. 496; Central Pac. R. R. Co. v. Albert Gallatin, 99 U. S. 727, 25 L. Ed. 504; Hathorn v. Calef, 2 Wall. 10, 17 L. Ed. 776; New Orleans, etc., R. Co. v. Harris, 27 Miss. 517; Corning v. McCullough, 1 N. Y. 47, 49 Am. Dec. 287; Coffin v. Rich, 45 Me. 507, 71 Am. Dec. 559; Fairchild v. Masonic Hall Ass'n, 71 Mo. 526.

The case here quoted from was one wherein the stockholder was plaintiff and the corporation, defendant. The amended legislation involved in that case was directed against certain practices of the corporation and these were [fol. 111] forbidden by the statute. The opinion recognizes the right of the corporation as well as of the stockholder to be immune from any impairment of contract obligations as between them, but it holds also that the corporation itself was subject to regulation by the Legislature and that it had the option to conform to such regulations or to cease its corporate operations; that by the amendment of its charter in conformity to the statute it exercised its option and elected to conform to the amended statute.

In Yoncalla State Bank v. Gemmil, 159 N. W. 798, (Minn.), it was said:

"But it is one thing to impose burdens upon the property voluntarily placed in a banking business by a stockholder of a bank, and quite another to impose a *personal liability* upon him, thereby subjecting property which he has not devoted to banking business to be taken from him to pay creditors of the bank."

We are confining our discussion at this point to the narrow question whether chapter 181 if applied retroactively imposed a burden upon the defendant additional to that previously existing under his contract. We deem it clear that it did impose such additional burden. If so, then it must be deemed an impairment of the obligations of defendant's contract unless it shall appear that the Legisla-

ture acted within its so-called reserve power as defined in [fol. 112] section 12, article 8 of the constitution and in section 8376 of the Code. The question of such power inheres necessarily in the question of constitutionality and we proceed to its consideration.

II. Section 12, article 8 of the Constitution of Iowa is as follows:

"Subject to the provisions of this article, the General Assembly shall have power to amend or repeal all laws for the organization or creation of corporations, or granting of special or exclusive privileges or immunities, by a vote of two-thirds of each branch of the General Assembly; and no exclusive privileges, except as in this article provided, shall ever be granted."

Pursuant to this constitutional provision, the Legislature enacted section 8376 of the present code (section 1619 Code '97) as follows:

"The articles of incorporation, by-laws, rules and regulations of corporations hereafter organized under the provisions of this title, or whose organization may be adopted or amended hereunder, shall at all times be subject to legislative control, and may be at any time altered, abridged or set aside by law, and every franchise obtained, used, or enjoyed by such corporation may be regulated, [fol. 113] withheld, or be subject to conditions imposed upon the enjoyment thereof, whenever the general assembly shall deem necessary for the public good."

This section is to be read and construed in the light of the constitutional provision, though its terms are not identical with the terms of the constitutional provision. But inasmuch as the power to enact section 8376 was conferred by section 12, article 8, and not otherwise, the two sections may be well construed as identical in legal effect. The appellee contends for a very broad construction and application of Section 8376 and puts especial emphasis upon terms that are not contained in the constitutional provision. A similar constitutional provision substantially identical in effect has obtained in many, if not in all, of our states. The courts of the various states, as well as the

Supreme Court of the United States, are in substantial harmony in the interpretation which is put upon such provision. There is substantial unanimity in the decisions that the reserve power thus contended for is a power of repeal of legislation relating to corporations and a power of withdrawal of privileges and immunities previously granted. It is not an affirmative power to impose new and additional [fol. 114] obligations or burdens upon the corporation; and especially it is not an affirmative power to add new obligations or burdens to the existing contracts of the stockholders. The limitations upon the reserve power is summar-i-ed in Cook on Corporations (above cited) as follows:

"But the power to make a new contract for the stockholders is not thereby given to the legislature. The legislature may repeal the charter *but cannot force the stockholder into a contract against his will.*"

In County of Santa Clara v. Southern Pacific, 13 Fed., 722, such power was defined by Justice Field as follows:

"*By the reservation clause it retains power only over that which it grants;* it does not grant the rails on the road; it does not grant the deposits alongside of it; it does not grant the cars on the track, nor the engines which move them, and over them it can exercise no power except such as may be exercised through its control over the franchise, and such as may be exercised with reference to all property used by carriers for the public. The reservation of power over the franchise—*that is over that which is granted*—makes it grant a conditional or revocable contract, whose obligation is not impaired by its revocation or change."

From Central Pacific R. R. Co. v. Albert Gallatin, 99 U. S., [fol. 115] 727; 25 L. Ed. 504-525, we quote the following:

"The object of a reservation of this kind in acts of incorporation is to insure to the government control over corporate franchises, rights and privileges, which, in its sovereign or legislative capacity, it may call into existence, *not to interfere with contracts which the corporation created by it may make.* Such is the purport of our language in Tomlinson v. Jessup, where we state the object

of the reservation to be 'to prevent a grant of corporate rights and privileges in a form which will preclude legislative interference with their exercise, if the public interest should at any time require such interference,' and that 'The reservation affects the entire relation between the state and corporation, and places under legislative control all rights, privileges and immunities derived by its charter directly from the state.' 15 Wall. 454, 21 L. Ed. 204. The same thing we repeated with greater distinctness in the case of R. R. Co. v. Maine, where we said that by the reservation the state retained the power to alter the act incorporating the company, in all particulars constituting the grant to it of corporate rights, privileges and immunities; and that 'The existence of the corporation, and its franchise and immunities, derived directly [fol. 116] from the state, were thus kept under its control.' But we added, that *'Rights and interests acquired by the company, not constituting a part of the contract of incorporation, stand upon a different footing.'* 96 U. S. 490, 25 L. Ed., 836."

In 1 Rose's Notes on U. S. Reports, p. 942, Mr. Rose summarizes the decisions of the court on this question as follows:

"In many of the cases, the purposes of the legislation attempted under the reserve power is the taking away of something—whether a franchise, power, privilege, or immunity—which the corporation has hitherto enjoyed * * *. Under the reserve power, the state * * * *may take away or it may modify that which it has granted. But that is all.*

Property acquired during the exercise of these powers it may not devest, *contracts already executed* it may not annul, acts lawful when committed it may not afterwards punish, taxes thus remitted it may not afterwards exact, and the legislation thus attempted *must be prospective and* not retrospective in its operation. This principle has been very clearly stated by several of the most eminent of the members of the Supreme Court of the United States."

The standard text books are all in accord along the same line. It is to be noted also that the reservation of such

power to the Legislature is one impliedly hostile to the [fol. 117] corporation.

Chapter 181 under consideration does not purport to repeal or to withdraw any privilege or immunity from the corporation. It does not purport to repeal or to withdraw any privilege or immunity from the stockholders. On the contrary it purports impliedly at least to confirm all previous legislation, and to add thereto an affirmative obligation of personal liability of the stockholder for the restoration of impaired capital. Prior to this legislation the stockholder was under such obligation only as he had voluntarily assumed. By virtue of the legislation, if valid, an obligation was imposed upon him against his consent. We deem it clear that such legislation was not within the purview of the reserve power.

Appellee cites to us authorities wherein legislation was sustained which purported to impose liability upon stockholders for the debts of the corporation notwithstanding that such stockholders were in the first instance immune therefrom. The argument in support of such holding is that the immunity from liability for the debts of a corporation is a privilege conferred by statute upon the stockholders and that under the reserve power it may be repealed or withdrawn. See Anderson v. The Common- [fol. 118] wealth, 18 Gratton (59 Va.), 295. For the purpose of this case we shall assume such to be the law. The argument is wholly consistent with our foregoing discussion. Liability of a stockholder for the debts of his corporation occupies a different field from that of the liability of one stockholder to another, or to the corporation. The latter liability is created by the mutual contract of the parties and not otherwise. Whether under our statute the qualified immunity of a stockholder from the payment of debts of the corporation is statutory rather than contractual, we do not now consider.

We note the contention of appellee that Chapter 181 added nothing to the law as it already existed. It is argued that the purported liability created by this chapter already existed under the express terms of Sections 9246 and 9248. The point is without merit. Leach v. Arthur Savings Bank, 203 Iowa 1052.

It is further contended by appellee that this action is maintainable under the provisions of Sections 9251 and

9252; that the stockholders are liable in any event for the debts of the corporation in case of insolvency; that in such case this defendant would be liable for a 100% assessment under the provisions of said section 9251 and 9252; that the [fol. 119] same end will be accomplished by the enforcing of the 100% assessment in the instant case. The argument is wholly untenable. No liability of the stockholder arises under section 9251 until the corporation becomes insolvent. If the liability should accrue, the corporation could not sue for it. Its very insolvency would preclude it from maintaining an action against any one. Nor could any other plaintiff sue the defendant separately upon such liability. Section 9253 provides the remedy pursuant to sections 9251 and 9252. Separate suits by separate creditors against separate stockholders, are not maintainable. All persons interested in the fund must be impleaded in the action. Section 9253. Platner v. Hughes, 200 Iowa 1363. The liability of a stockholder under sections 9251 and 9252 is not affected by the question of his liability under Sections 9246 and 9248. The assessment provided for in 9248 is for the benefit of the corporation as a going concern. The proceeds of the assessment are invested in its assets and and are subject to the same loss and to the same management by corporate officials as any other asset. The statute provides for no finality in such assessment. If the proceeds be lost in the further course of business, the same statute is open for the purpose of another assessment of the same kind. The statute in [fol. 120] terms provides no limit upon the repetition of assessments against the stockholder to restore impaired capital. It does not in terms give the minority stockholder any right of defense against any number of assessments. This record discloses that this is not the first assessment of this kind that has been made against the stockholders of this bank. A 50% assessment was made some years previously. The brief of appellant asserts that another like assessment of 100% was made in 1929 while this action has been pending. This statement is outside of the record and we give it no consideration. It may properly serve the function of a hypothetical case as an illustration of what may be done under chapter 181 if we sustain the contention of appellees. Restoration assessments may be poured into this bank indefinitely by the majority control, and no payment thereof by the minority stockholder will enable him to escape from

the thraldom of his membership. The receptacle into which the successive assessments may be shoveled, is forever receptive, like a wagon-box without an endgate.

For further authorities in support of our holding herein reference may be had to the following: Noble State Bank v. Haskell, 219 U. S. 104, 55 L. Ed. 112; Garey v. St. Joe [fol. 121] Mining Co., 91 Pac. 369; Sherman v. Smith, 1 Black 587; Matter of Lees Bank, 21 N. Y. 9; Barnes v. Arnold, 51 N. Y. Supp. 1109; Barnes v. Travor, 61 N. Y. Supp. 85; 14 C. J. 974; Shields v. Ohio, 95 U. S. 319, 324; Chicago N. & St. P. v. Wisconsin, 238 U. S. 491, 59 L. Ed. 1423; Zabriskie v. Hackensack & N. Y. R. Co., 18 N. J. Eq. 178, 192 (90 Am. Dec. 617); People v. Beakes Dairy Co., 222 N. Y. 416, 119 N. E. 115, 3 A. L. R. 1260; Commonwealth v. Essex Co., 13 Gray (Mass.) 239, 253; People v. O'Brien, 111 N. Y. 1, 52, 18 N. E. 692, 704 (2 L. R. A. 255, 7 Am. St. Rep. 684); In Re St. Sinai Hospital, 250 N. Y. 103, 164 N. E. 871, 874; Superior Water etc. Co. v. Superior, 263 U. S. 125, 68 L. Ed. 204; Macon Gas Co. v. Richter, 143 Ga. 397, 85 S. E. 112; McKenzie v. Guaranteed Bond & Mortgage Co., 147 S. E. 102, 105; 12 C. J. 1027, 14 C. J. 187, 189; Weede v. Emma Copper Co., 200 Pac. 517; In Re Opinion of Justices, 166 N. E. 401.

III. There is another feature of this legislation, which tends to nullify its application to the case before us. The original legislation providing for assessment of stockholders for the purpose of curing impairment of capital appeared as Sections 1878 and 1879 of the Code of '97. This original legislation authorized a sale of the stock of any stockholder who refused to pay his assessment. This legis- [fol. 122] lation was later amended by Chapter 181, 41 G. A., which we have set forth above.

In the case before us, and pursuant to this amendment, the plaintiff, or its directors, caused the stock of the defendant to be sold and the same was purchased for the nominal sum of $1.00 per share. This left a deficiency of $99.00 and this suit is brought against the original stockholder to recover the $99.00. It is to be noted that this amendment carries a certain quality of self-contradiction and inconsistency and of an arbitrary imposition of affirmative personal liability upon the original stockholder. This affirmative assertion of personal liability, as against such stockholder,

is in no sense an exercise of a power reserved by the Legislature in the grant of the original franchise. If this legislation had been in effect at the time of the granting of the original franchise, it could become personally obligatory upon this defendant only by his consent to become a stockholder upon the conditions thus imposed. To apply this legislation to him after he had become a stockholder, is to impose upon him arbitrarily a personal liability which could not have been originally imposed upon him without his consent. The original statute authorized a sale of the stock. Such sale would necessarily oust the stockholder. [fol. 123] The purchaser would become the new stockholder. The interest of the first stockholder would be extinguished. As long as he remained a stockholder, his contribution to the restoration of the value of his stock operated presumptively to his own interest. The stock and his contribution thereto still belonged to him. But if the stock be sold, then the purchaser necessarily steps into the stockholder's shoes and becomes thereafter the beneficial owner of all contributions, which may be made to the valuation of such stock. Having elected to buy such stock and to become the beneficiary of all benefits to accrue to the holder of such stock, why should it be deemed a duty of the old stockholder to contribute to the new one an assessment ninety-nine times greater than the value paid by the new stockholder? The corporation being solvent and a going concern, the payment of this assessment by the old stockholder operates exclusively to the benefit of the new one. If the corporation were insolvent and a closed concern, a different question would be presented. In such event the old stockholder would be liable for a 100% assessment under his original franchise. But his liability would not be to the corporation, nor to the new stockholder, but would be a liability to the creditors to the extent of their loss and no [fol. 124] more. When this suit was brought against this defendant, he was no longer a stockholder. The corporation had no jurisdiction over him as such. He had been wholly ousted. In order to sustain the right of the corporation to maintain this action, we must hold that the Legislature has power to charge an affirmative personal liability against a former stockholder, not for the purpose of liquidation, not for the purpose of paying the claims of creditors, not for the purpose of repairing any wrong done by himself, but for the sole purpose of restoring his former

stock to a 100% valuation in the hands of the purchaser, who had bought it for its then existing nominal value of $1.00. Such a proceeding amounts to a mere taking of the funds of an individual and donating the same to another individual. In this case the Banking Superintendent declared an impairment of 100% of the capital. He did not however deem the bank as insolvent, but continued it as a going concern. It is still a going concern. The payment of this assessment by this defendant will necessarily operate a gift of $99.00 per share to the new stockholder. We do not think that it is within the legislative function to confer such a power upon any agency; nor indeed do we think that the Legislature itself could exercise such a power.

In support of the foregoing discussion, the following [fol. 125] authorities will be found pertinent; Garey v. St. Joe Mining Co., 91 Pac. 369.

"Sheer oppression and wrong cannot be inflicted under the guise of amendment or alteration. Beyond the sphere of the reversed powers, the vested rights of property of corporations, in such cases, are surrounded by the same sanctions and are as inviolable as in other cases." Shields v. Ohio, 95 U. S. 319; Chicago M. & St. P. v. Wisconsin, 238 U. S. 491 (59 Law Ed. 1423).

"The reserved right to amend a corporate charter does not confer mere arbitrary power and cannot be so exercised as to violate fundamental principles of justice by taking of property without due process of law." Chicago M. & St. P. R. C. v. Wisconsin.

"Amendments of a charter of a corporation which are vital, radical and fundamental in their nature cannot be adopted without the unanimous consent of the stockholder. Increasing the amount of the common capital stock in a corporation in excess of the amount authorized by the charter is a vital and fundamental change of the original contract and requires the unanimous consent of all the stockholders." Macon Gas Co. v. Richter, 143 Ga. 397 (85 S. E. 112).

See also McKenzie v. Guaranteed Bond & Mortgage Co., 147 S. E. 102:

[fol. 126] "A provision for an assessment upon stock to pay debts is entirely different from one imposing a personal liability upon the stockholder. The one may be good when the other is not." Weeds v. Emma Cowper Co., 200 Pac. 117.

See also authorities collated in 12 C. J. 1027 and 14 C. J. 187.

For the foregoing reasons, we are of the opinion that the judgment below should be reversed.

---

[fol. 127] IN SUPREME COURT OF IOWA

[Title omitted]

JUDGMENT—April 10, 1931

In this case, the Court being fully advised in the premises, file their written opinion Affirming the judgment of the District Court.

It is therefore considered by the Court that the judgment of the Court below be and it is hereby Affirmed and that a writ of procedendo issue accordingly.

It is further considered by the Court that the Appellant pay the costs of this appeal, taxed at $78.70 and that execution issue therefor.

---

[fol. 128] [File endorsement omitted]

IN SUPREME COURT OF IOWA

[Title omitted]

PETITION FOR APPEAL, ASSIGNMENT OF ERRORS, AND PRAYER FOR REVERSAL—Filed May 20, 1931

Petition for Appeal

Considering himself aggrieved by the final decision of the Supreme Court of the State of Iowa in the above entitled case, the defendant (appellant) therein, hereby prays

that an appeal be allowed to the Supreme Court of the United States and for an order fixing the amount of the bond thereon, same to act as a supersedeas.

Appellant represents that the issues in this case question the validity of Chapter 181, Acts of the 41st G. A. of Iowa (Section 9248-a1, Code of Iowa, 1927), insofar as same is construed to apply to and render appellant per- [fol. 129] sonally liable as a stockholder in Woodbine Savings Bank of Woodbine, Iowa, for an assessment to rehabilitate impaired capital of said bank, upon the grounds of its being repugnant to the Constitution of the United States, notably Section Ten of Article One in that said statute impairs the obligation of appellant's contract as a stockholder in said bank and the Fourteenth Amendment to the Constitution of the United States in that said statute deprives appellant of his property without due process of law; that the decision of the Supreme Court of Iowa, as set forth in the opinion rendered April 10, 1931, was in favor of the validity of said statute as so applied, and denied the claim of appellant that said statute as applied was repugnant to the Constitution of the United States.

That cause is one in which, under the legislation in force prior to the adoption of the Act of Congress approved January 31, 1928 as amended by the Act of Congress approved April 26, 1928, a review could have been had in the Supreme Court of the United States on writ of error under Section 237 of the Judicial Code as amended, being section 344 United States Code, Title 28.

## Assignment of Errors

1. The Supreme Court of the State of Iowa erred in [fol. 130] holding that Section 9248-a1 of the Code of Iowa, 1927 does not impair the obligation of appellant's contract as a stockholder in the Woodbine Savings Bank of Woodbine, Iowa, in violation of Section Ten of Article One of the Constitution of the United States.

2. The Supreme Court of the State of Iowa erred in holding that Section 9248-a1 of the Code of Iowa 1927 was a permissable change of remedy for a liability in existence before the enactment of said statute.

3. The Supreme Court of the State of Iowa erred in not holding Section 9248-a1 of the Code of Iowa 1927 unconstitutional as depriving appellant of his property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

4. That the Supreme Court of the State of Iowa erred in holding that there was a personal liability resting upon appellant to pay the assessment to rehabilitate the impaired capital of appellee bank prior to the enactment of Section 9248-a1 of the Code of Iowa, 1927.

5. The Supreme Court of the State of Iowa erred in holding that Section 9248-a1 of the Code of Iowa, 1927 did not impose a new and additional liability upon appellee not imposed upon him by his contract as a stockholder in appellee [fol. 131] bank or by the law of the state of Iowa at the time appellant became such stockholder.

Prayer for Reversal

For which errors, the defendant (appellant) prays that the said judgment of the Supreme Court of the State of Iowa, dated April 10, 1931, in the above entitled case, be reversed and a judgment entered in favor of said defendant (appellant) and for costs.

J. M. Parsons, W. E. Wallace, H. B. Claypool, Counsel for Appellant.

---

[fol. 132] [File endorsement omitted]

In Supreme Court of Iowa

[Title omitted]

Order Allowing Appeal—Filed May 20, 1931

The appellant in the above entitled suit having prayed for the allowance *for* an appeal in this case to the Supreme Court of the United States from the judgment made and entered in the above entitled suit by the Supreme Court of the State of Iowa on the 10th day of April, 1931 and from each and every part thereof and having prayed and filed

his petition for appeal, assignment of errors, and prayer for reversal, pursuant to the statutes and the rules of the Supreme Court of the United States in such case made and provided, it is now here ordered that an appeal be, and the same is hereby allowed to the Supreme Court of the United States from the Supreme Court of the State of Iowa in the above entitled cause, as provided by law, and it is further ordered that the Clerk of the Supreme Court of the State [fol. 133] of Iowa shall prepare and certify a transcript of the record, proceedings and judgment in this cause and transmit the same to the Supreme Court of the United States so that he should have the same in said court within thirty days of this date.

And it is further ordered that security for supersedeas and costs on appeal be fixed in the sum of $4,500.00.

Dated May 20th, 1931.

Frederick F. Faville, Chief Justice of the Supreme Court of the State of Iowa.

---

[fols. 134-135½] Bond on appeal for $4,500, approved and filed May 20, 1931, omitted in printing.

---

[fols. 136 & 137] Citation, in usual form, showing service on J. T. Hunt, omitted in printing.

---

[fol. 138] [File endorsement omitted]

IN SUPREME COURT OF IOWA

[Title omitted]

STIPULATION RE TRANSCRIPT OF RECORD—Filed June 8, 1931

It is stipulated between Amos Shriver, Appellant, and Woodbine Savings Bank of Woodbine, Iowa, that the Clerk of the Supreme Court of Iowa shall include in the transcript of this case to be filed in the United States Supreme Court the following portions of the record in the Supreme Court of Iowa, to-wit:

1. The entire printed record in the Supreme Court of Iowa contained in appellant's abstract filed in the Supreme Court of Iowa.

2. Appellant's assignment of errors in the Supreme Court of Iowa, together with the filing date thereof.

3. Opinion delivered in this case by the Supreme Court of Iowa and filed on June 24, 1929, together with filing date thereof.

4. The order of the Supreme Court of Iowa granting rehearing in this case filed June 23, 1930, together with the filing date thereof.

[fol. 139] 5. The opinion of the Supreme Court of Iowa in this case, together with the dissenting opinion of Judges Evans, Albert and Grimm, filed in this case April 10, 1931, together with the filing date thereof.

6. The judgment of the Supreme Court of Iowa in this case dated April 10, 1931.

7. The appellant's petition for appeal, assignment of errors and prayer for reversal filed May 20, 1931, together with filing date thereof.

8. The order allowing appeal to the Supreme Court of the United States filed May 20, 1931, together with the filing date thereof.

9. Appellant's bond on appeal denominated supersedeas bond, filed May 20, 1931, together with the filing date thereof.

10. The citation and the service thereof, together with the filing date thereof.

11. This stipulation as to the record, together with the filing date thereof.

It is agreed that the Clerk of the Supreme Court of Iowa shall prepare the transcript of record to be used in the Supreme Court of the United States in accordance with this stipulation.

Dated this 23rd day of May, 1931.

Amos Shriver, by J. M. Parsons, W. E. Wallace, H. B. Claypool, His Counsel. Woodbine Savings Bank of Woodbine, Iowa, by C. A. Bolter, J. A. Murray, Its Counsel.

[fol. 140] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 141] IN THE SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY AND DESIGNATION OF PARTS OF THE RECORD DEEMED NECESSARY FOR THE CONSIDERATION THEREOF—Filed June 15, 1931

The appellant herein intends to rely upon the following points in the appeal taken in this case.

I. The Supreme Court of the State of Iowa erred in holding that Section 9248-a1 of the Code of Iowa, 1927 does not impair the obligation of appellant's contract as a stockholder in the Woodbine Savings Bank of Woodbine, Iowa, in violation of Section Ten of Article One of the Constitution of the United States.

II. The Supreme Court of the State of Iowa erred in holding that Section 9248-a1 of the Code of Iowa 1927 was a permissible change of remedy for a liability in existence before the enactment of said statute.

III. The Supreme Court of the State of Iowa erred in not holding Section 9248-a1 of the Code of Iowa 1927 unconstitutional as depriving appellant of his property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

IV. That the Supreme Court of the State of Iowa erred in holding that there was a personal liability resting upon appellant to pay the assessment to rehabilitate the impaired capital of appellee bank prior to the enactment of Section 9248-a1 of the Code of Iowa, 1927.

V. The Supreme Court of the State of Iowa erred in holding that Section 9248-a1 of the Code of Iowa, 1927 did not impose a new and additional liability upon appellee not imposed upon him by his contract as a stockholder in appellee bank or by the law of the state of Iowa at the time appellant became such stockholder.

[fol. 142] Appellant designates the following parts of the record in this appeal as those which he thinks necessary for consideration of the above mentioned points:

I. All of the record in this appeal (Number —) except repetitions of titles as certified and transmitted by the

Clerk of the Supreme Court of Iowa to the Clerk of the United States Supreme Court.

James M. Parsons, Des Moines, Iowa, Counsel for Appellant. W. E. Wallace, H. B. Claypool, of Counsel.

We, the attorneys of record for the appellee, Woodbine Savings Bank of Woodbine, Iowa, hereby acknowledge due service of the above statement of points and designation this 6th day of June, 1931 and we do hereby stipulate and agree that the record in said appeal may be printed as designated in the within and foregoing statement and designation.

C. A. Bolter, J. A. Murray, Counsel for Appellee.

[fols. 143 & 144] The Woodbine Savings Bank of Woodbine, Iowa, a corporation, appellee in the case entitled Amos Shriver, Appellant vs. Woodbine Savings Bank of Woodbine, Iowa, Appellee, on appeal to the Supreme Court of the United States, hereby acknowledges due service of the foregoing and within statement of points on which appellant intends to rely and designation of parts of the record deemed necessary for the consideration thereof this 11th day of June, 1931, and hereby agrees that the record in said appeal may be printed as designated in the within and foregoing statement and designation.

Woodbine Savings Bank of Woodbine, Iowa, Appellee, by J. T. Hunt, Its Cashier.

---

Endorsed on cover: File No. 35,972. Iowa Supreme Court. Term No. 158. Amos Shriver, appellant, vs. Woodbine Savings Bank of Woodbine, Iowa. Filed June 12, 1931. File No. 35,972.

FILE COPY

FILED
JUN 2 8

# Supreme Court of United States

OCTOBER TERM, 1931.

No. 158

AMOS SHRIVER, *Appellant*,

vs.

WOODBINE SAVINGS BANK OF WOODBINE, IOWA
*Appellee*.

## STATEMENT SHOWING BASIS OF JURISDICTION, AS REQUIRED BY RULE TWELVE.

JAMES M. PARSONS,
Des Moines, Iowa,
*Counsel for Appellant.*

W. E. WALLACE,
H. B. CLAYPOOL,
Williamsburg, Iowa,
*Of Counsel.*

# Supreme Court of United States

OCTOBER TERM, 1931.

---

No. 158

---

AMOS SHRIVER, *Appellant*,

vs.

WOODBINE SAVINGS BANK OF WOODBINE, IOWA, *Appellee.*

---

## STATEMENT SHOWING BASIS OF JURISDICTION, AS REQUIRED BY RULE TWELVE.

---

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Appellant, Amos Shriver, in support of the jurisdiction of this Court to review the above entitled case on appeal respectfully states:

This appeal is taken from the judgment entered in the Supreme Court of the State of Iowa, April 10, 1931, in favor of the Woodbine Savings Bank of Woodbine, Iowa, and against the appellee, Amos Shriver.

(a) Statutory Provision sustaining the Jurisdiction of This Court.—The statute sustaining the jurisdiction of this court to review this case is Section 237 of the Judicial Code as amended by the Act of February 13, 1925, Chapter 229, 43 Stat. 936. (United States Code, Title 28, Section 344) (Rule 46 of this Court).

The procedure is by appeal in lieu of writ of error under the former practice. This is provided for by the Act of January 31, 1928, Chapter 14, 45 Stat. 54, as amended by the Act of April 26, 1928 Chap. 440, 45 Stat. 466.

(b) Date of Judgment Sought To Be Reviewed and On Which Application for Appeal was Presented.—The decision of the Supreme Court of Iowa, from which this appeal is taken, was filed April 10, 1931 (R. 86).* The judgment of the Supreme Court of Iowa is dated April 10, 1931 (R. 127). The application for appeal therefrom was presented and the order allowing the appeal entered May 20, 1931 (R. 128, 132). The citation was issued on the 20th day of May, 1931, and served May 22, 1931 (R. 136).

(c) Nature of Case and Rulings of Iowa Supreme Court. —Suit by Woodbine Savings Bank, Appellee to recover upon an assessment from appellant as a stockholder of the bank. The assessment was for the purpose of restoring impaired capital (R. 2).

The facts of the case were in the main embodied in a stipulation between the parties (R. 11).

Appellee was incorporated as a savings bank under the law of Iowa on May 6, 1891 (R. 12, line 18) and adopted Articles of Incorporation (R. 21, line 14). Appellee re-incorporated and renewed its corporate existence on May 11, 1911 and adopted amended and substituted Articles of Incorporation (R. 12, line 24, R. 23, line 30).

Appellant was the owner of twenty-six shares of the capital stock of appellee bank of the par value of one hundred dollars per share. Appellee acquired his twenty-six shares of stock at the following times: Ten shares on May 18, 1891,

---

Note:

* The record has not as yet been printed. All references herein to the record refer to the pages of the original record as prepared by the Clerk of the Iowa Supreme Court.

ten shares on April 16, 1906 and six and one-sixth shares on February 14, 1917. Because appellee bank was being criticized by the Iowa Banking Department for having some of its shares owned in fractional parts, appellant surrendered his certificate evidencing the six and one-sixth shares and in lieu thereof received on June 8, 1926, a certificate representing the six shares of stock evidenced by his former certificate for six and one-sixth shares. (R. 18, line 19). Appellant's stock was fully paid up stock (R. 46, line 7).

No provision relative to assessment to restore impaired capital is made in the Articles of Incorporation originally adopted (R. 21, line 14), nor in the amended and substituted Articles of Incorporation adopted May 11, 1911 (R. 23, line 30), nor in the stock certificates evidencing the ownership of the stock (R. 26, line 24), nor in the by-laws of appellee bank (R. 46, line 13). The whole basis claimed for liability on the part of appellant is found in the statutes of Iowa.

The pertinent legislation originated in an act of the Iowa General Assembly effective May 5, 1894 (Acts 25 G. A. of Iowa, Chap. 29) (Appendix, page 9). This act was codified and carried forward into the Code of Iowa, 1897, as Sections 1878, 1879, and 1880 thereof. (See Appendix, page 10). It was further codified and carried forward into the Code of Iowa, 1924, as Sections 9246, 9247, 9248, 9249, and 9250 thereof. (See Appendix, page 11). In 1925, the Forty-first General Assembly of Iowa enacted an amendment to Section 9248 of the Code of Iowa, 1924 (41 G. A., Chap. 181) (Appendix, page 13), which was carried forward and codified as Section 9248-a1, Code of Iowa, 1927 (Appendix, page 15). The amendment made by the 41 G. A. (41 G. A., Chap. 181) became effective March 13, 1925 (Appendix, page 13).

The statutes, together with the amendment of the Forty-first General Assembly, as they appear in the Code of Iowa, 1927 are set out in the Appendix, pages 9 to 15.

On February 15, 1927, the Superintendent of Banking of Iowa found the capital stock of appellee bank impaired one hundred per cent. Pursuant to Sections 9246, 9247 and 9248, Code of Iowa, 1927, an assessment was ordered and laid upon the stockholders to make good the impairment (R. 13, line 17). Appellant's twenty-six shares of stock were advertised and sold for One Dollar per share or a total of $26.00. (R. 16, line 13).

This suit was then brought under Chapter 181, Acts 41 G. A. (Sec. 9248-a1, Code of Iowa, 1927) to recover from appellant the amount of the assessment over what was realized from the sale of the stock or a total sum of $2574 (R. 2).

Appellant by answer in the trial court attacked Chapter 181, Acts 41 G. A. (Section 9248-a1, Code of Iowa, 1927) as applied to him in that it impaired the obligation of his contract as a stockholder in the bank; in violation of Section Ten, Article One Constitution of United States and also that it deprived him of his property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States (R. 6, 8).

The trial court found that 9248-a1, Code of Iowa, 1927 was not vulnerable to the attack made against it by appellant and rendered judgment against appellant for the amount claimed (R. 50, 56, line 28).

The assessment was made by the Board of Directors of appellee bank (R. 14, line 3, R. 32, line 14).

Appellant never attended and was given no notice of any stockholders' meeting in connection with the assessment (R. 17; line 15).

Appellant perfected an appeal to the Iowa Supreme Court from the judgment and assigned as errors the invalidity of Section 9248-a1, Code of Iowa, 1927 under Section Ten, Article One, Constitution of the United States in that it impaired the obligation of contract and also under the Fourteenth

Amendment to the Constitution of the United States in that it deprived him of his property without due process of law (R. 63, 64, 65).

On June 24, 1929, the Iowa Supreme Court filed its opinion reversing the judgment below and holding that Section 9248-a1 Code of Iowa, 1927, impaired the obligation of appellant's contract as a stockholder in the bank and was invalid as applied to appellant for any impairment of capital stock existing at the time of the enactment of the statute (R. 70, 79). In this opinion the Iowa Supreme Court held the statute valid as to any impairment that came into existence after the enactment of the Statute. (Division IV of opinion, R. 82).

Because of Division IV of this opinion, appellant filed petition for rehearing to correct same, and appellee also filed petition for rehearing. These petitions for rehearing were granted by the court (R. 85).

On April 10, 1931 the Iowa Supreme Court rendered its opinion affirming the judgment below (R. 86) and holding the statute, Section 9248-a1 Code of Iowa, 1927, did not impair the obligation of contract as applied to appellant but was a permissible change of remedy for a liability existing before the enactment of Chapter 181, Forty-first General Assembly. There is a dissenting opinion by three judges of the Iowa Supreme Court sustaining appellant's contention both as to impairment of contract and due process of law (R. 102).

The majority opinion of the Iowa Supreme Court recognizes that appellant had a contract with appellee bank and the other stockholders which was within the protection of the Constitution of the United States. However, the Iowa court so construed that contract and the statutes forming a part thereof as to find an obligation upon appellant to pay the assessment and sustained Section 9248-a1 Code of Iowa, 1927 as a mere change of remedy.

The majority opinion of the Iowa Supreme Court does not mention or discuss appellant's contention that Section 9248-a1, Code of Iowa, 1927, violates due process of law. The minority opinion holds the statute vulnerable to appellant's attack on the grounds of impairment of contract and due process. Thus the Federal questions presented were raised by appellant at the *commencement of this* proceeding, were presented and passed upon by the Iowa Supreme Court, and were determined adversely to the Constitutional rights claimed. The first opinion of the Iowa Supreme Court appears in the record (R. 70) and is reported in 226 Northwestern 374. The final opinion appears in the record (R. 86) and is reported in 236 Northwestern 10.

An assessment to restore impaired capital of a bank, such as is involved in this case, is not to be confused with an assessment upon stockholders to pay the debts of the corporation upon its insolvency. The distinction is well-defined in *Leach v. Arthur Savings Bank*, 203 Iowa 1052, *Delano v. Butler*, 118 U. S. 634-653.

In substance this case is one where the appellant became a stockholder in appellee bank at a time when the existing law of Iowa imposed no personal liability upon him to pay an assessment to restore impaired capital. His stock was fully paid up stock. Long subsequent to the time he became a stockholder, the legislature of Iowa enacted Chapter 181, 41st G. A. making him personally liable for the deficiency in an assessment after the sale of his stock, and the Iowa Supreme Court has upheld this statute as applied to appellant. The Iowa Supreme Court has upheld the validity of this statute against appellant's attack that it impairs the obligation of his contract as a stockholder and takes his property without due process of law.

(d) Cases Believed to Sustain the Jurisdiction of this Court.

(a) Impairment of Contract.

*Columbia Ry., Gas & Electric Co. v. State of South Carolina*, 261 U. S. 236, 244.
*Detroit United Ry. v. Michigan*, 242 U. S. 238, 246-248.
*Northern Pacific Ry. Co. v. State of Minnesota, ex rel. City of Duluth*, 208 U. S. 583-589-591.
*Stearns v. Minnesota*, 179 U. S. 223-232.
*United States ex rel. Von Hoffman v. Quincy*, 4 Wall. 535-550.
*The Bridge Proprietors v. Hoboken Co.*, 68 U. S. (1 Wall.) 116-141.
*Harrison v. Remington Paper Co.*, (U. S. C. C. A.) 140 Fed. 385.

(b) Due Process of Law.

*Spencer v. Merchant*, 125 U. S. 345-352.
*Holden v. Hardy*, 169 U. S. 366, 390.
*Chicago St. P. M. & O. Ry. Co. v. Holmberg*, decided December 1, 1930, 51 Sup. Ct. Rep. 56 (Not yet officially reported).
*Great Northern Ry. Co. v. Cahill*, 253 U. S. 71.

Where the state court has sustained legislation over the objection that it impairs the obligation of contract, it is for this court to say whether there is a contract, the extent of its obligation and whether its obligation has been impaired by the subsequent legislation. Where state statutes form the basis of or are embodied in a contract, this court, upon the merits, makes its own construction of the contract and is not bound by the construction placed upon the statutes by the state court.

That appellant's relationship and liability to the corporation is contractual is well-settled.

*Harrison v. Remington Paper Company*, (U. S. C. C. A.), 140 Fed. 385.
*First National Bank v. Hawkins*, 174 U. S. 365.
*Whitman v. National Bank*, 176 U. S. 559.
*Richmond v. Irons*, 121 U. S. 27-55-56.

Under the 14th Amendment to the Constitution of the United States arbitrary legislation that takes the property of one man and gives it to another is invalid. In the present case, long subsequent to the time appellant became the owner and holder of his stock in appellee bank, an act is passed imposing upon him personal liability to the bank after sale of his stock. Appellant is forced to pay to the bank a sum sufficient to make the capital stock formerly owned by him worth its full face value in the hands of the purchaser who obtained it for $1.00 per share. Such result is a simple taking of appellant's property and giving the same to the new stockholder. The statute is arbitrary and unreasonable and offends fundamental principles of justice. It is submitted that this case is one properly within the jurisdiction of this court.

Respectfully submitted,
JAMES M. PARSONS,
Des Moines, Iowa,
*Counsel for Appellant.*

W. E. WALLACE,
H. B. CLAYPOOL,
Williamsburg, Iowa,
*Of Counsel.*

# APPENDIX.

## CHAPTER 29, ACTS OF THE TWENTY-FIFTH GENERAL ASSEMBLY OF IOWA.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. That should the capital stock of any state or savings bank organized under the laws of this state be now, or hereafter become impaired by losses or otherwise, the board of directors of such state or savings bank may by consent of the Auditor of State, within thirty (30) days after passage of this act or after such impairment shall come to their knowledge, cause the deficiency to be made good by assessment upon the shareholders pro rata for the amount of stock held by them. Notice of such assessment to be given in writing signed by the president or vice-president and attested by the cashier or secretary of the association with the corporate seal thereof. The deposit of said notice in the postoffice directed to the shareholders at their last known address shall be sufficient for the purpose of this act.

SEC. 2. Should any of the shareholders in any state or savings bank organized under the laws of this state neglect or refuse to pay their pro rata of an assessment made under provisions of section 1 of this act within ninety days from the date of notice thereof, it shall be the duty of the board of directors to cause a sufficient amount of the capital stock held by such shareholder or shareholders to be sold at public auction (after thirty days' notice shall have been given by posting such notice of sale in the office of the bank and by publishing such notice in a newspaper of the city or town in which the bank is located, or in a newspaper published nearest thereto) to make good the deficiency, and the balance, if any, shall be returned to such delinquent shareholder or shareholders.

SEC. 3. Should the board of directors of any state or savings bank organized under the laws of this state, the capital of which now is, or hereafter may become impaired, neglect or refuse to proceed as provided in section 1 of this act, they shall by reason of such neglect or refusal, for a period of ten days after being requested in writing by the owner of two-thirds of the stock of such bank by and with the consent of the auditor of state, become individually liable for the amount of such deficiency and said liability may be enforced at law by any creditor of or stockholder in the association; or in case of its subsequent insolvency, by the receiver thereof.

SEC. 4. This act shall be in force and effect from and after its publication in the Iowa State Register and Des Moines Leader, newspapers published in the city of Des Moines, Iowa.

Approved April 24th, 1894.

I hereby certify that the foregoing act was published in the Iowa State Register May 5 and in the Des Moines Leader May 4, 1894.

W. M. McFARLAND, Secretary of State.

## CODE OF IOWA, 1897.

SEC. 1878. Assessments. Should the capital stock of any state or savings bank become impaired by losses or otherwise, the auditor of the state may require an assessment upon the stockholders, and shall address an order to the several members of the board of directors of such bank, fixing the amount of assessment required, and the board of directors shall, within thirty days after the receipt of such order, cause such deficiency to be made good by a ratable assessment upon the stockholders for the amount of stock held by them, by giving such stockholders notice in writing, signed by the president or vice-president, attested by the

cashier or secretary of the bank, under its seal, if it have one, and deposited in the post-office, addressed to the last known residence of the stockholders, proof thereof to be made by the affidavit of the person so making the deposit, which notice shall state the entire sum to be raised, and the amount due from the addressed stockholder. (25 G. A., ch. 29, Sec. 1.)

SEC. 1879. How enforced. Should any stockholder neglect or refuse to pay his assessment within ninety days from the date of mailing notice thereof, the board of directors shall cause a sufficient amount of the capital stock held by such stockholder to be sold at public auction to make good the deficiency, after giving thirty days' notice thereof by posting the same in the bank, and publishing it in some newspaper of the county in which the bank is located, which notice shall recite the assessment made, the amount due thereunder from the stockholder, and the time and place of sale; proof of all which may be made in the manner provided in the preceding section. After such deficiency is made good, the balance of the proceeds of said sale, if any, shall be paid to the delinquent stockholder. (Same, Sec. 2.)

SEC. 1880. Directors liable. Should the board of directors of such bank having an impaired capital neglect or refuse to proceed as above provided for a period of thirty days after receipt of such order from the auditor of state, they shall become severally liable for any deficiency which liability may be enforced at law by any creditor of or stockholder in the bank, or receiver appointed to wind up its affairs. (Same, Sec. 3.)

## CODE OF IOWA, 1924.

9246. Impairment of capital stock—assessments. Should the capital stock of any state or savings bank become impaired by losses or otherwise, the superintendent of bank-

ing may require an assessment upon the stockholders, and shall address an order to the several members of the board of directors of such bank, fixing the amount of assessment required. (C., '97, Sec. 1878.)

9247. Compliance with order. The board of directors shall, within thirty days after the receipt of such order, cause such deficiency to be made good by a ratable assessment upon the stockholders for the amount of stock held by them, by giving such stockholders notice in writing, signed by the president or vice president, attested by the cashier or secretary of the bank, under its seal, if it have one, and deposited in the postoffice, addressed to the last known residence of the stockholders, proof thereof to be made by the affidavit of the person so making the deposit, which notice shall state the entire sum to be raised, and the amount due from the addressed stockholder. (C., '97, Sec. 1878.)

9248. Assessment enforced. Should any stockholder neglect or refuse to pay his assessment within ninety days from the date of mailing notice thereof, the board of directors shall cause a sufficient amount of the capital stock held by such stockholder to be sold at public auction to make good the deficiency, after giving thirty days' notice thereof by posting the same in the bank, and publishing it in some newspaper of the county in which the bank is located, which notice shall recite the assessment made, the amount due thereunder from the stockholder, and the time and plaec of sale; proof of all which may be made in the manner provided in the preceding section. (C., '97, Sec. 1879.)

9249. Balance of proceeds. After such deficiency is made good, the balance of the proceeds of said sale, if any, shall be paid to the delinquent stockholder. (C., '97, Sec. 1879.)

9250. Liability of directors. Should the board of directors of such bank having an impaired capital neglect or refuse to proceed as above provided for a period of thirty days

after receipt of such order from the superintendent of banking, they shall become severally liable for any deficiency, which liability may be enforced at law by any creditor of or stockholder in the bank, or receiver appointed to wind up its affairs. (C., '97, Sec. 1880.)

## CHAPTER 181, ACTS 41 G. A. OF IOWA.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. Service of notice—personal liability. Section nine thousand two hundred forty-eight (9248) of the code, 1924, is hereby amended by striking out the word "thirty" in line eight (8) thereof and substituting therefor the word "ten"; also, by inserting after the word "thereof" in line eight (8) of said section the words "by personal service or".

Section nine thousand two hundred forty-eight (9248) is also amended by adding at the end of said section the following: "Should the proceeds of a sale hereunder of all of the stock of any stockholder be insufficient to satisfy his entire assessment liability he shall be personally liable for the deficiency, which may be collected by suit brought in the name of the bank against such stockholder."

SEC. 2. Publication clause. This act being deemed of immediate importance, shall be in full force and effect from and after its publication in the Des Moines Register, a newspaper published in the city of Des Moines, Iowa, and the Washington Evening Journal, a newspaper published at Washington, Iowa.

Approved March 10, A. D. 1925.

I hereby certify that the foregoing act was published in Plain Talk March 12, 1925, and the Washington Evening Journal March 13, 1925.

W. C. RAMSAY, Secretary of State.

9246. Impairment of capital stock—assessments. Should the capital stock of any state or savings bank become impaired by losses or otherwise, the superintendent of banking may require an assessment upon the stockholders, and shall address an order to the several members of the board of directors of such bank, fixing the amount of assessment required. (C., '97, Sec. 1878; C., '24, Sec. 9246.)

9247. Compliance with order. The board of directors shall, within thirty days after the receipt of such order, cause such deficiency to be made good by a ratable assessment upon the stockholders for the amount of stock held by them, by giving such stockholders notice in writing, signed by the president or vice president, attested by the cashier or secretary of the bank, under its seal, if it have one, and deposited in the postoffice, addressed to the last known residence of the stockholders, proof thereof to be made by the affidavit of the person so making the deposit, which notice shall state the entire sum to be raised, and the amount due from the addressed stockholder. (C., '97, Sec. 1878; C., '24 Sec. 9247.)

9248. Assessment enforced. Should any stockholder neglect or refuse to pay his assessment within ninety days from the date of mailing notice thereof, the board of directors shall cause a sufficient amount of the capital stock held by such stockholder to be sold at public auction to make good the deficiency, after giving ten days' notice thereof by personal service or by posting the same in the bank, and publishing it in some newspaper of the county in which the bank is located, which notice shall recite the assessment made, the amount due thereunder from the stockholder, and the time and place of sale; proof of all which may be made in the manner provided in the preceding section. (C., '97, Sec. 1879; C., '24, Sec. 9248; 41 G. A., ch. 181, Sec. 1.)

9248-a1. Liability for deficiency. Should the proceeds of a sale under the preceding section of all of the stock of any stockholder be insufficient to satisfy his entire assessment liability he shall be personally liable for the deficiency, which may be collected by suit brought in the name of the bank against such stockholder. (41 G. A., ch. 181, Sec. 1.)

9249. Balance of proceeds. After such deficiency is made good, the balance of the proceeds of said sale, if any, shall be paid to the delinquent stockholder. (C., '97, Sec. 1879; C., '24, Sec. 9249.)

9250. Liability of directors. Should the board of directors of such bank having an impaired capital neglect or refuse to proceed as above provided for a period of thirty days after receipt of such order from the superintendent of banking, they shall become severally liable for any deficiency, which liability may be enforced at law by any creditor of or stockholder in the bank, or receiver appointed to wind up its affairs. (C., '97, Sec. 1880; C., '24, Sec. 9250.)

FI[illegible]

# Supreme Court of the United [illegible]

OCTOBER TERM, 1931.

---

No. 158.

---

AMOS SHRIVER, *Appellant*,

vs.

WOODBINE SAVINGS BANK OF WOODBINE, IOWA,
*Appellee*.

---

APPEAL FROM THE SUPREME COURT OF THE STATE OF IOWA.

---

BRIEF FOR THE APPELLANT, AMOS [illegible]

---


JAMES M. [illegible]
Des Moines, [illegible]
Counsel for [illegible]

W. E. [illegible]
W[illegible]
H. B. [illegible]
W[illegible]

# INDEX.


| | Page |
|---|---|
| Opinions below | 1 |
| Statement of the case | 1 |
| Specifications of errors | 4 |
| Summary of Argument | 5 |
| ARGUMENT: | |
| I—No personal liability to pay the assessment existed prior to 1925 | 6 |
| II—Section 9248-a1 Code of Iowa, 1927 (41 G. A. Ch. 181) as applied by the Iowa Supreme Court impairs the obligation of appellant's contract as a stockholder in the bank | 13 |
| III—Section 9248-a1 Code of Iowa, 1927 (41 G. A., Ch. 181) as applied to appellant, takes the property of appellant without due process of law | 22 |
| Conclusion | 27 |
| Appendix setting forth statutes | 28 |
| (a) Chapter 29, Acts of the Twenty-fifth General Assembly of Iowa | 28 |
| (b) Code of Iowa, 1897 | |
| Sec. 1878 | 29 |
| Sec. 1879 | 30 |
| Sec. 1880 | 30 |
| (c) Code of Iowa, 1924, | |
| Sec. 9246 | 30 |
| Sec. 9247 | 31 |
| Sec. 9248 | 31 |
| Sec. 9249 | 31 |
| Sec. 9250 | 31 |
| (d) Chapter 181, Acts 41 General Assembly of Iowa | 32 |
| (e) Code of Iowa, 1927, | |
| Sec. 9246 | 33 |
| Sec. 9247 | 33 |
| Sec. 9248 | 33 |
| Sec. 9248-a1 | 34 |
| Sec. 9249 | 34 |
| Sec. 9250 | 34 |

# CITATIONS.

Anderson v. Commonwealth, 18 Grat. (59 Va.) 295 ..... 17
Alexander v. Crosby, 143 Iowa, 50 ..... 9
Andrew v. People's State Bank of Humboldt, 234 N. W. 542 ..... 10, 11; 12
Brine v. Hartford Insurance Co., 96 U. S. 627 ..... 22
Bernheimer v. Converse, 206 U. S. 516 ..... 14, 15, 19
Bronson v. Kinzie, 1 How. 311 ..... 21
Brunswick Terminal Co. v. United States, 192 U. S. 386 ..... 9
City of Carondelet v. Picot, 38 Mo. 125 ..... 8, 9
Cole v. City of Muscatine, 14 Iowa, 296 ..... 8
Conrad v. Starr, 50 Iowa, 470 ..... 8
City of Camden v. Allen, 26 N. J. Law. 398 ..... 8
Columbia Railway, Gas & Electric Co. v. State of South Carolina 261 U. S. 236 ..... 15, 16
County of San Mateo v. Southern Pacific (C. C.) 13 Fed. Rep. 722 ..... 16
Central Pacific R. R. Co. v. Albert Gallatin, 99 U. S. 700 ..... 16
Com. v. Essex Co., 13 Gray, 239 ..... 17
Commercial National Bank v. Weinhart, 192 U. S. 243 ..... 17
Chicago, M. & St. P. R. Co. v. Wisconsin, 238 U. S. 491 ..... 18, 25
Dollar Savings Bank v. United States, 86 U. S. 227 ..... 8, 8
Davis v. Mills, 194 U. S. 451 ..... 12
Deweese v. Smith, 45 C. C. A. 408, 106 Fed. Rep. 438 ..... 14
Detroit United Ry. v. Michigan, 242 U. S. 238 ..... 15, 16
Delano v. Butler, 118 U. S. 634 ..... 17
Enterprise Ditch Co. v. Moffit, 58 Neb. 642 ..... 15
Flash v. Conn, 109 U. S. 371 ..... 14
First National Bank v. Hawkins, 174 U. S. 365 ..... 14
Globe Newspaper Co. v. Walker, 210 U. S. 356 ..... 8
Glass Co. v. Dewey, 16 Mass. 94 ..... 9
Garey v. St. Joe Mining Co., 32 Utah 497, 91 Pac. 369 ..... 14, 15, 16, 17
Green v. Biddle, 8 Wheat. 1 ..... 15
Great Northern Ry. Co. v. Cahill, 253 U. S. 71 ..... 24
Hulitt v. Bell, (C. C.) 85 Fed. Rep. 98 ..... 8, 8
Highway Trailer Co. v. Janesville Electric Co., 187 Wis. 161, 204 N. W. 773 ..... 9
Harrison v. Remington Paper Co., 72 C. C. A. 405, 140 Fed. Rep. 385 14, 14
Henley v. Meyers, 215 U. S. 373 ..... 19, 20
Holden v. Hardy, 169 U. S. 366 ..... 24
Iowa Telephone Co. v. Keokuk, 226 Fed. Rep. 82 ..... 16
In re Culver, 145 Iowa, 1 ..... 14
Jefferson County Farm Bureau v. Sherman, 208 Iowa 614 ..... 8
Kenosha Railroad Co. v. Marsh, 17 Wis. 13 ..... 17

Lease v. Vance, 28 Iowa, 509 ____ 8
Land Co. v. Jernegan, 126 Mass. 155 ____ 9
Louisiana v. New Orleans, 102 U. S. 203 ____ 14
Leach v. Arthur Savings Bank, 203 Iowa, 1052 ____ 10, 10, 12, 17
Lake Shore & M. S. Ry. Co. v. Smith, 173 U. S. 684 ____ 23, 25
Mechanics Foundry & Machine Co. v. Hall, 121 Mass. 272 ____ 8
Machine Co. v. Hall, 121 Mass. 272 ____ 9, 20
McCracken v. Hayward, 43 U. S. (2 How.) 608 ____ 14, 21
Miller v. The State, 15 Wall. 478 ____ 16
Northern Pacific Railway Co. v. State of Minnesota, 208 U. S. 583 ____ 15
Pollard v. Bailey, 87 U. S. (20 Wall.) 520 ____ 8
Planters Bank v. Sharp, 6 How. 301 ____ 22
Richmond v. Irons, 121 U. S. 27 ____ 14
Snook v. Georgia Imp. Co., 83 Ga. 61 ____ 17
Seibert v. Lewis, 122 U. S. 284 ____ 14, 22
Sturges v. Crownshield, 4 Wheat. 122 ____ 15
Stearns v. Minnesota, 179 U. S. 236 ____ 16
St. John v. Building & Loan Association, 136 Iowa, 448 ____ 16
Superior Water, Light & Power Co. v. City of Superior, 263 U. S. 125 ____ 17, 18
Selig v. Hamilton, 234 U. S. 652 ____ 19
Slater v. Mexican National Railroad Co., 194 U. S. 120 ____ 12
Terre Haute & Indianapolis Railroad Co. v. State of Indiana, 194 U. S. 579 ____ 13, 15, 16
The Bridge Proprietors v. Hoboken, 68 U. S. (1 Wall.) 116 ____ 16
The Andover & Medford Turnpike Corp. v. Gould, 6 Mass. 40 ____ 8
The Chester Glass Co. v. Dewey, 16 Mass. 94 ____ 8
Turnpike Corp. v. Gould, 6 Mass. 40 ____ 20, 21
United States v. Stevenson, 215 U. S. 190 ____ 8
United States ex rel. Von Hoffman v. Quincy, 71 U. S. (4 Wall.) 535 ____ 14
Union Pacific Railroad Co. v. United States, 99 U. S. 700 ____ 16
Von Hoffman v. Quincy, 71 U. S. (4 Wall.) 535 ____ 15
Whitman v. National Bank, 176 U. S. 559 ____ 14
Waggoner v. Flack, 188 U. S. 595 ____ 20
Yoncalla State Bank v. Gemmill, 134 Minn. 334 ____ 14, 23

## CONSTITUTIONAL AND STATUTORY PROVISIONS.

Constitution of Iowa, Sec. 12, Art. 8 ____ 17
25 General Assembly Iowa, Ch. 29 (set out in full) ____ 28
Section 8376, Code of Iowa, 1927 (set out in full) ____ 18
Other statutes set out see under appendix above ____ 28-34

## TEXT BOOKS.

Beach on Corp. (1891) 1st Ed. Vol. 1 pg. 73-74 ..... 16
Cook on Corp. 5th Ed. Sec. 501 ..... 17
Clark & Marshall on Private Corporations Vol. 3 Sec. 631-f ..... 17
1 Rose's Notes on U. S. Reports, Rev. Ed. page 989 ..... 16
Thompson's Commentaries on the Law of Corporations, Vol. 4, Sec. 5417 ..... 17
Morawetz on Corporations (2nd Ed.) Vol. 2 page 1097 ..... 17

# Supreme Court of the United States

OCTOBER TERM, 1931.

---

No. 158.

---

AMOS SHRIVER, *Appellant*,

vs.

WOODBINE SAVINGS BANK OF WOODBINE, IOWA, *Appellee.*

---

## BRIEF FOR THE APPELLANT, AMOS SHRIVER.

---

### OPINIONS BELOW.

Two opinions were rendered by the Supreme Court of Iowa. The first opinion is reported in 226 N. W. 374 and the second and final opinion is reported in 236 N. W. 10. Neither opinion is officially reported in Iowa Reports. The first opinion is printed in the record (R. 47) and the second (R. 55).

### STATEMENT OF THE CASE.

The facts of the case were in the main embodied in a stipulation used as evidence in the trial court. (R. 7, 8.)

There were four cases by the same plaintiff (appellee herein) against four separate defendants. The stipulation was drawn and used in all four of the cases as evidence.

The action is a suit at law by Woodbine Savings Bank against Amos Shriver, a stockholder, for personal judgment upon an assessment to restore impaired capital of the bank.

Appellee was incorporated under the laws of Iowa on May 6, 1891, with Articles of Incorporation duly adopted (R. 8, 15). Appellee reincorporated and renewed its corporate existence May 11, 1911, and adopted what it denominated "Amended and Substituted Articles of Incorporation." (R. 8, 17.)

Amos Shriver, appellant, acquired ten shares of the capital stock of appellee bank on May 18, 1891, ten more shares of such stock on April 16, 1906 and six and one-sixth shares on February 14, 1917. The Iowa Banking Department was criticizing appellee for allowing some of its shares to be owned in fractional parts. At the request of appellee bank, appellant surrendered to the bank his certificate evidencing his six and one-sixth shares, received payment for the one-sixth share, and was issued a new certificate evidencing the same six shares. (R. 13.) Appellant's stock was fully paid up stock. (R. 34.)

No provision relative to an assessment to restore impaired capital is found in the original Articles of Incorporation (R. 15) or in the so-called Amended and Substituted Articles of Incorporation (R. 17), or in the stock certificates evidencing ownership of the stock, or in the by-laws of appellee bank (R. 34). No basis for liability is claimed other than the statutes of Iowa.

The statutes involved are set out in an Appendix hereto, pages 28 to 34.

The legislation originated in an Act of Iowa General Assembly effective May 5, 1894. (Acts 25 G. A. of Iowa, Chap. 29) (Appendix page 29). This act was codified and carried forward into the Code of Iowa, 1897, as Sections 1878, 1879, 1880 thereof. (Appendix page 29.) The Act was further codified and carried forward into the Code of Iowa, 1924,

as Sections 9246, 9247, 9248, 9249 and 9250 thereof. (Appendix page 30.) In 1925 the Forty-first General Assembly of Iowa enacted an amendment to Section 9248 of the Code of Iowa, 1924, (41 G. A. Chap. 181) (Appendix page 32), which was carried forward and codified as Section 9248-a1, Code of Iowa, 1927 (Appendix page 34).

On February 15, 1927, the Superintendent of Banking of Iowa found the capital stock of appellee bank impaired one hundred per cent. Pursuant to Sections 9246, 9247 and 9248 Code of Iowa, 1927, an assessment was ordered and made to make good the impairment. (R. 9.) The twenty-six shares of stock owned by appellant were advertised and sold for One Dollar per share or a total of $26.00 (R. 11).

This suit was then brought under Chap. 181, Acts 41 G. A. (Sec. 9248-a1, Code of Iowa, 1927) to recover from appellant the amount of the assessment over what was realized from the sale of the stock or a total sum of $2,574.00 (R. 1).

Appellant by answer in the trial court attacked Chap. 181, Acts 41 G. A. (Section 9248-a1, Code of Iowa, 1927) as applied to him in that it impaired the obligation of his contract as a stockholder in the bank, in violation of Section Ten, Article One, Constitution of the United States and deprived him of his property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States (R. 4).

The trial court found that Section 9248-a1, Code of Iowa, 1927, was not vulnerable to the attack made upon it by appellant and entered judgment against appellant for the amount claimed. (R. 37, 42.)

The assessment was made by the Board of Directors of Appellee bank. (R., 3, 23, 9.)

Appellant perfected an appeal to the Supreme Court of Iowa and assigned as errors the invalidity of Section 9248-a1 Code of Iowa, 1927, under Section Ten, Article One, Consti-

tution of the United States and the Fourteenth Amendment to the Constitution of the United States. (R. 43, 44.)

On June 24, 1929, the Iowa Supreme Court filed its opinion reversing the judgment below (R. 47) and holding Section 9248-a1 Code of Iowa impaired the obligation of appellant's contract as a stockholder in the bank as to any impairment of capital in existence when the statute was enacted. In this opinion, the Iowa Supreme Court held the statute to be valid as to any impairment of capital stock coming into being after the statute was enacted. (Division IV of opinion R. 54.)

Because of Division IV of this opinion, appellant applied for rehearing to correct same, and appellee also filed petition for rehearing. The petitions for rehearing were granted (R. 55). On April 10, 1931, the Iowa Supreme Court filed its opinion affirming the judgment below. (R. 55.) There is a dissenting opinion by three judges of the Iowa Supreme Court upholding appellant's contentions. (R. 64.)

## SPECIFICATION OF ERRORS.

1. The Supreme Court of the State of Iowa erred in holding Section 9248-a1, Code of Iowa, 1927 does not impair the obligation of appellant's contract as a stockholder in the Woodbine Savings Bank of Woodbine, Iowa, in violation of Section Ten of Article One of the Constitution of the United States.

2. The Supreme Court of Iowa erred in holding that Section 9248-a1 Code of Iowa, 1927 was a permissible change of remedy for a liability in existence before the enactment of said statute.

3. The Supreme Court of the State of Iowa erred in not holding Section 9248-a1 of the Code of Iowa, 1927 unconstitutional as depriving appellant of his property without due

process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

4. That the Supreme Court of the State of Iowa erred in holding that there was a personal liability resting upon appellant to pay the assessment to rehabilitate the impaired capital of appellee bank prior to the enactment of Section 9248-a1, Code of Iowa, 1927.

5. The Supreme Court of the State of Iowa erred in holding that Section 9248-a1 of the Code of Iowa, 1927 did not impose a new and additional liability upon appellee not imposed upon him by his contract as a stockholder in appellee bank or by the law of the State of Iowa at the time appellant became such stockholder.

## SUMMARY OF ARGUMENT.

1. The law of Iowa prior to the enactment by the 41st General Assembly (41 G. A. Iowa Ch. 181) (Sec. 9248-a1 Code of Iowa 1927) did not impose any personal liability upon stockholders in savings banks to pay an assessment to restore impaired capital. Therefore no personal liability was imposed upon appellant under his stockholders contract to pay the assessment.

2. Sec. 9248-a1 Code of Iowa 1927 (41 G. A. Iowa Ch. 181) imposed a new and additional liability upon appellant as a stockholder in Woodbine Savings Bank of Woodbine, Iowa and as applied by the Iowa Supreme Court impairs the obligation of appellant's contract as a stockholder in said bank.

3. Sec. 9248-a1 Code of Iowa 1927 (41 G. A. Iowa Ch. 181) as applied to appellant is an unreasonable and arbitrary imposition of personal liability not assumed or consented to and takes appellant's property without his consent and gives it to another. Hence, said statute violates due process of law and is unconstitutional.

# ARGUMENT.

## I.

### NO PERSONAL LIABILITY TO PAY THE ASSESSMENT EXISTED PRIOR TO 1925.

The challenged statute (41 G. A. Ch. 181) Sec. 9248-a1, Code of Iowa, 1927 became effective March 13, 1925. (Appendix page 34.)

Prior to the enactment of this statute the legislation of Iowa did not provide for a liability such as is sought to be enforced in this case. The legislation relative to assessment upon stockholders to restore impaired capital first came into existence in the year 1894 by virtue of an Act of the 25th General Assembly of Iowa. (Acts 25 G. A. Ch. 29.) (Appendix page 28). The enactment of the 25th G. A. remained the same, except for slight changes due to codification, until 1925, when the 41st G. A. enacted what is now Section 9248-a1 Code of Iowa, 1927.

The enactment of the 25th General Assembly of Iowa was as follows:

> "That should the capital stock of any state or savings bank organized under the laws of this state be now, or hereafter become impaired by losses or otherwise, the board of directors of such state or savings bank may by consent of the Auditor of state, within thirty (30) days after the passage of this act, or after such impairment shall come to their knowledge, cause the deficiency to be made good by assessment upon the shareholders pro rata for the amount of stock held by them. Notice of such assessment to be given in writing signed by the president or vice president and attested by the cashier or secretary of the association with the corporate seal thereof. The deposit of said notice in the post office directed to the shareholders at their last known address shall be sufficient for the purpose of this act."
>
> "Sec. 2. Should any shareholders in any state or savings bank organized under the laws of this state neglect

or refuse to pay their pro rata of an assessment made under Section 1 of this act within ninety days after notice thereof, it shall be the duty of the board of directors to cause a sufficient amount of the capital stock held by such shareholder or shareholders to be sold at public auction (after thirty days' notice shall have been given by posting such notice of sale in the office of the bank and by publishing such notice in a newspaper of the city or town in which the bank is located, or in a newspaper published nearest thereto) to make good the deficiency, and the balance, if any, shall be returned to such delinquent shareholder or shareholders."

"Sec. 3. Should the board of directors of any state or savings bank organized under the laws of this state, the capital stock of which now is, or hereafter may become impaired, neglect or refuse to proceed as provided in Section 1 of this act, they shall by reason of such neglect or refusal, for a period of ten days after being requested in writing by the owner of two-thirds of the stock of such bank by and with the consent of the Auditor of state, become individually liable for the amount of such deficiency and said liability may be enforced at law by any creditor of or stockholder in the association; or in case of its subsequent insolvency by the receiver thereof."

The above act was carried forward and codified as Sections 1878, 1879, and 1880, Code of Iowa, 1897. (Appendix page 29.)

It was further carried forward and codified as Sections 9246, 9247, 9248, 9249, 9250, Code of Iowa, 1924. (Appendix page 30.)

It is plain that the 25th General Assembly of Iowa in enacting the above quoted statute created a new and different right. It is equally clear that at the same time and as a part of the same act it specified how the liability should be enforced.

Where a statute creates a right, and provides a special

remedy, that remedy is exclusive. This is the general rule of construction.

*City of Carondelet v. Picot*, 38 Mo. 125.
*Pollard v. Bailey*, 20 Wall. (87 U. S.) 520, 527.
*The Andover & Medford Turnpike Corp. v. Gould*, 6 Mass. 40.
*Dollar Savings Bank v. United States*, 19 Wall. (86 U. S.) 227, 238.
*Jefferson County Farm Bureau v. Sherman*, 208 Iowa 614, 618.
*Cole v. City of Muscatine*, 14 Iowa 296.
*Lease v. Vance*, 28 Iowa 509.
*Conrad v. Starr*, 50 Iowa 470.
*Hullitt v. Bell*, 85 Fed. Rep. 98-102.
*The Chester Glass Co. v. Dewey*, 16 Mass. 94-101.
*Mechanics Foundry & Machine Co. v. Hall*, 121 Mass. 272.
*City of Camden v. Allen*, 26 N. J. Law 398.
*Globe Newspaper Co. v. Walker*, 210 U. S. 356.

The rule is founded upon the thought that where the legislature designates the remedy it impliedly prohibits any other and thus limits the liability.

*United States v. Stevenson*, 215 U. S. 190.
*Dollar Savings Bank v. United States*, 86 U. S. (19 Wall.) 227, 238.

The case of *Hullitt v. Bell*, 85 Fed. (C. C.) 98, was an action under the National banking Act to recover against a stockholder upon an assessment to restore impaired capital, and the court held that there was no personal liability. The statute involved provided for an assessment against the shareholders of national banks to restore impaired capital and for sale of the stock in case the shareholder did not pay the assessment.

The Act of the 25th General Assembly of Iowa in its original form and as codified did not in terms impose a personal liability on shareholders to pay the assessment. It was optional with the shareholder. He had the right to pay the as-

sessment and protect his stock, otherwise he lost sufficient of his stock to pay the assessment. The Iowa legislature in this act did not use any language appropriate to create a personal liability.

Surely where the legislature is creating a liability, its language is not to be extended by construction.

*Brunswick Terminal Co. v. National Bank of Baltimore*, 192 U. S. 386, 390.
*Alexander v. Crosby*, 143 Iowa, 50, 54.
*Highway Trailer Co. v. Janesville Electric Co.*, 187 Wis. 161, 204 N. W. 773, 780.

If it had been the intent of the legislature to create a personal liability against the shareholder for the assessment, it would have used language such as "it shall be the duty of the stockholder to pay", "The shareholder shall pay", "the shareholder shall be liable" or similar language.

*Glass Co. v. Dewey*, 16 Mass. 94, 101.
*Machine Co. v. Hall*, 121 Mass. 272, 275.
*Land Co. v. Jernegan*, 126 Mass. 155.
*City of Carondelet v. Picot*, 28 Mo. 125.

It will be noticed that in Section 3 of this Act (25 G. A. Ch. 29) the legislature used the term "individually liable" when providing the liability of bank directors who failed to proceed and make the assessment.

It is not reasonable to say that a shareholder was personally liable for the assessment to restore impaired capital after his stock had been sold. The sale of the stock terminated his relationship with the corporation. Had the Iowa legislature intended to make him liable after his stock was sold, it would have expressly so declared.

The statute passed in 1925 (41 G. A. Ch. 181, Sec. 9248-a1, Code of 1927) does expressly provide for a personal liability after sale of the stock and also provides a remedy by suit.

The Supreme Court of Iowa held in its opinion in this case that Section 9248-a1, Code of Iowa, 1927 (41 G. A. Ch.

181) was merely a change of remedy for an existing liability. The Iowa Supreme Court treated the sale of the stock as a remedy for a personal liability and held that the new statute Section 9248-a1, Code of Iowa 1927 (41 G. A. Ch. 181) did not add a new liability.

The Iowa Court has held in other cases that there was no personal liability upon stockholders under the statutes prior to the enactment of Section 9248-a1 Code of 1927 (41 G. A., Ch. 181).

*Leach v. Arthur Savings Bank*, 203 Iowa 1052, 213 N. W. 772.

*Andrew v. Peoples State Bank of Humboldt*, 234 N. W. 542, 546 (Decided January 13, 1931. Not yet published in Iowa Reports.)

In *Leach v. Arthur Savings Bank*, 203 Iowa 1052, the Iowa Supreme Court held that the stockholder had the option of paying the assessment or of permitting his stock to be subjected to sale for failure to pay, and that the payment of the assessment was voluntary in the sense that the stockholder exercised his option to pay rather than permit his stock to be sold. In the course of the opinion and at page 1057 the Iowa Court said:

> "It will be noticed that, under these sections for making an assessment to rehabilitate impaired capital, there is no personal liability created as against the stockholder (under Chapter 181, Acts of the Forty-first General Assembly, a personal liability is created for a deficiency); while, under Section 1882, the liability provided is a personal liability. The most that could happen to the holder of stock under which an assessment had been made under Section 1878 and the following sections is that, if he wished to keep his capital stock, he must pay the assessment; otherwise, if he failed, neglected, or refused to pay his assessment, he lost a sufficient amount of his capital stock to pay such assessment, but he was not made personally liable for such assessment. This is the distinction between the effect of Section 1878, and its

companion sections, providing for assessments against the stock, and the superadded liability provided for by Section 1882. Or, to put it another way, the assessment statute is for the purpose of raising funds to continue the banking operation, while Section 1882 carries a liability for liquidation purposes only, which can never be called into operation until the bank has passed into the hands of a receiver."

As late as January 1931 the Iowa Supreme Court in *Andrew v. Peoples State Bank of Humboldt*, 234 N. W. 542, 546, referring to the case of *Leach v. Arthur Savings Bank*, 203 Iowa 1052, said:

"It is true that in the *Arthur Savings Bank* case we held that the stockholder had the option of paying the assessment or of subjecting his stock to sale and forfeiture for failure to pay and that the payment of the assessment was voluntary in the sense that the stockholder exercised his option in that direction. Under the statute then in force, there was no personal liability of the stockholder such as is now provided by section 9248-a1."

In the present case the Iowa Court says there was always a personal liability resting on the stockholder to pay an assessment to restore impaired capital, but there was no way of enforcing it. The Iowa Court overlooks the rule that where a new liability is imposed by statute and a remedy expressly provided, there is no liability in excess of the remedy. The right created is limited by the remedy given. The remedy operates as a limitation and goes to cut down the right.

Statutes of limitations are usually considered as laws of procedure affecting the remedy only. This is not true where a new right is created and, in the same statute, the time for enforcing this right is limited.

In *Davis v. Mills*, 194 U. S. 451, 454 this court said:

> "It is true that this general proposition is qualified by the fact that ordinary limitations of actions are treated as laws of procedure and as belonging to the *lex fori*, as affecting the remedy only, and not the right. But in cases where it has been possible to escape from that qualification by a reasonable distinction courts have been willing to treat limitations of time as standing like other limitations, and cutting down the defendant's liability wherever he is sued. The common case is where a statute creates a new liability, and in the same section, or in the same act limits the time within which it can be enforced, whether using words of condition or not. The *Harrisburg*, 119 U. S. 199, 30 L. ed. 358, 7 Sup. Ct. Rep. 140. But the fact that the limitation is contained in the same statute is material only as bearing upon construction. It is merely a ground for saying that the limitation goes to the right created and accompanies the obligation everywhere."

It has also been held that where a statute creates a new right of action and prescribes the method of assessing damages, the method of assessing damages operates as a limitation upon the right and does not pertain to the remedy alone.

*Slater v. Mexican National Railroad Company*, 194 U. S. 120.

So in this case, the right given by the statute was limited to a sale of the stock. It was optional with the shareholder whether he paid the assessment or whether he permitted his stock to be sold and his relation to the corporation terminated. If the shareholder did not care to invest more capital in the enterprise, he was under no duty or obligation to do so. It is submitted that this is the proper construction of the statute and the measure of appellant's liability under his contract as a stockholder. Such is the construction adopted by the Iowa Supreme Court in the cases of *Leach v. Arthur Savings Bank*, 203 Iowa, 1052 and *Andrew v. Peoples State Bank of Humboldt*, 234 N. W. 542.

The opinion of the Iowa Supreme Court in this case is fanciful and sustains the statute challenged as unconstitutional by an erroneous finding as to the obligation of appellant's contract as a stockholder. Under the record in this case the question of what was the obligation of appellant's contract prior to the enactment of section 9248-a1, Code of Iowa 1927 is a federal question and the Iowa Supreme Court can not avoid Section 10 of Article 1, Constitution of the United States by an erroneous construction of the statute that formed a part of the appellant's contract.

*Terre Haute & Indianapolis Railroad Co. v. State of Indiana*, 194 U. S. 579.

II.

**SECTION 9248-a1, CODE OF IOWA, 1927, (41 G. A. CH. 181) AS APPLIED BY THE IOWA SUPREME COURT IMPAIRS THE OBLIGATION OF APPELLANT'S CONTRACT AS A STOCKHOLDER IN THE BANK.**

Appellant owned twenty-six shares of capital stock in appellee bank. The stock was all fully paid up stock. It was all acquired by appellant prior to the enactment of Section 9248-a1, Code of Iowa, 1927. In the preceding division of this argument, we have attempted to show that the law prior to 1925 when the legislature enacted Section 9248-a1, Code of 1927 (41 G. A., Ch. 181) did not impose any personal liability upon appellant to pay an assessment to restore impaired capital.

Appellant acquired all of his stock in appellee bank prior to 1925. Ten shares were acquired on May 18, 1891, ten shares on April 16, 1906 and six and one-sixth shares on February 14, 1917. Because appellee bank was being criticized by the Iowa Banking Department for having some of its shares owned in fractional parts, appellant surrendered his certificate evidencing the six and one-sixth shares and

in lieu thereof received on June 8, 1926, a certificate representing his six shares evidenced in his former certificate for six and one-sixth shares (R. 13, 34).

The form of the certificate is shown (R. 35), and it was stipulated that the certificates evidencing the other shares were in the same form except as to dates and number of shares (R. 34).

The certificate of June 8, 1926, represented six shares acquired by appellant in 1917. (R. 34.) The certificate is merely evidence of the stock and not the stock itself.

*In re Culver*, 145 Iowa 1.

The relationship between appellant as a stockholder and appellee, the corporation was contractual.

*Flash v. Conn*, 109 U. S. 371.
*First National Bank v. Hawkins*, 174 U. S. 365, 372.
*Whitman v. National Bank*, 176 U. S. 559, 564.
*Richmond v. Irons*, 121 U. S. 27, 55, 56.
*Harrison v. Remington Paper Co.*, 72 C. C. A. 405, 140 Fed. Rep. 385.
*Bernheimer v. Converse*, 206 U. S. 516, 530.
*Garey v. St. Joe Mining Co.*, 32 Utah 497, 91 Pac. 369.
*Yoncalla State Bank v. Gemmill*, 134 Minnesota 334.
*Deweese v. Smith*, 45 C. C. A. 408, 106 Fed. Rep. 438.

The law existing at the time appellant became the owner of his stock formed a part of his contract and fixed the obligations of the contract.

*McCracken v. Hayward*, 43 U. S. (2 How.) 608, 612.
*Seibert v. Lewis*, 122 U. S. 284, 294, 295,
*United States ex rel. Von Hoffman v. Quincy*, 71 U. S. (4 Wall.) 535, 550.
*Harrison v. Remington Paper Co.*, 72 C. C. A. 405, 140 Fed. Rep. 385.

It is the law that fixes the obligation of every contract. This court said in *Louisiana v. New Orleans*, 102 U. S. 203, 206:

"The obligation of a contract in the constitutional sense is the means provided by law by which it can be enforced,—by which the parties can be obliged to perform it."

The obligation of a contract "is the law which binds the parties to perform their agreement."

*Von Hoffman v. City of Quincy*, 71 U. S. (4 Wall.) 535, 552.
*Sturges v. Crownshield*, 17 U. S. (4 Wheat.) 122, 197.

Therefore, at the time appellant entered into the contract as a stockholder in appellee bank, no obligation was cast upon him to pay an assessment to restore impaired capital. No such obligation was imposed upon appellant until 1925 when the legislature of Iowa enacted Section 9248-a1 Code of 1927. By this statute, a personal liability is created for a deficiency in the assessment after sale of the stock. Surely under the law existing when appellant made his contract, there was no obligation upon him to pay a deficiency after sale of his stock. The legislature of Iowa certainly would have used express language had it intended any such liability.

In creating the personal liability for the deficiency in the assessment after sale of the stock, a new burden is cast upon appellant as a stockholder. Thus, the contract of appellant as a stockholder in appellee bank is impaired in violation of Section Ten, Article One, Constitution of the United States.

*Northern Pacific Railway Co. v. The State of Minnesota*, 208 U. S. 583, 591.
*Bernheimer v. Converse*, 206 U. S. 516, 530.
*Terre Haute & Indianapolis Railroad Co. v. State of Indiana*, 194 U. S. 579.
*Detroit Ry. v. Michigan*, 242 U. S. 238, 246.
*Columbia Railway Gas and Electric Company v. State of South Carolina*, 261 U. S. 236, 251.
*Garey v. St. Joe Mining Co.*, 32 Utah, 497.
*Green v. Biddle*, 8 Wheat. 84.
*Enterprise Ditch Co. v. Moffit*, 58 Neb. 642.

The construction of the state statutes by the Iowa Supreme Court is not conclusive on this court when the question of impairment of the obligation of contract is involved. It is for this court to say whether there is a contract, the extent of its obligation, and whether the obligation is impaired.

*Columbia Railway, Gas and Electric Co. v. State of South Carolina*, 261 U. S. 236, 244, 245.
*Detroit United Ry. v. Michigan*, 242 U. S. 238, 246, 248.
*Stearns v. Minnesota*, 179 U. S. 223, 232.
*The Bridge Proprietors v. Hoboken*, 68 U. S. (1 Wall.) 116, 141, 145.
*Terre Haute & Indianapolis Railroad Co. v. State of Indiana*, 194 U. S. 579.

The reserved power of the state over corporations is not applicable to prevent the statute (Sec. 9248-a1, Code of Iowa, 1927) from being an impairment of contract. The reserve power statutes originated after *Dartmouth College* case, 4 Wheat. 518. The great weight of authority is that the reserve power applies only as between the state and corporation. The state reserves the right to control or revoke all rights it granted the corporation. It does not apply to change the rights and obligations as between the stockholders and the corporation.

*Miller v. The State*, 15 Wall. 478 (15 Wall. 478).
*St. John v. Building & Loan Association*, 136 Iowa 448, 454.
*Garey v. St. Joe Mining Co.*, 32 Utah 497, 91 Pac. 369, 12 L. R. A. (N. S.) 554.
*Union Pacific Railroad Co v. United States*, 99 U. S. 700, 720, 721.
*Central Pacific R. R. Co. vs. Albert Gallatin*, 99 U. S. 700, 727, 741, 748, 758.
1 Roses Notes on U. S. Reports Rev. Ed. p. 989.
*County of San Mateo v. Southern Pacific*, (C. C.) 13 Fed. Rep. 722, 755.
*Iowa Telephone Co. v. Keokuk*, 226 Fed. Rep. 82, 92.
Beach on Corp. (1891) (1st Ed.) Vol. 1, pages 73, 74.

*Superior Water, Light & Power Co. v. City of Superior*, 263 U. S. 125.
Cook on Corporations, 5th Ed. Sec. 501.
Clark & Marshall on Private Corporations, Vol. 3, Sec. 631 f.
Thompson's Commentaries on the Law of Corporations, Vol. 4, Sec. 5417.
*Kenosha Railroad Co. v. Marsh*, 17 Wis. 13, 16.
Morawetz on Corporations, (2nd Ed.) Vol. 2, page 1097.
*Com. v. Essex Co.*, 13 Gray, 239, 253.
*Snook v. Georgia Imp. Co.*, 83 Ga. 61.

There is a clear distinction between an assessment to restore impaired capital and an assessment to pay debts of the corporation upon its insolvency and liquidation. The assessment to restore impaired capital is for the benefit of the corporation to be used and invested as other capital, it is a reinvestment by the stockholder.

*Leach v. Arthur Savings Bank*, 203 Iowa 1052.
*Delano v. Butler*, 118 U. S. 634.
*Commercial National Bank v. Weinhard*, 192 U. S. [illegible].

The charter privilege of immunity or limited immunity of stockholders from corporate debts may be withdrawn by the state under the reserved power because it is a privilege granted by the state. Not so as to liability to restore impaired capital. The state does not grant any privilege in this respect.

*Garey v. St. Joe Mining Co.*, 32 Utah 497.
*Anderson v. Commonwealth*, 18 Grat. (59 Va.) 295.

The constitutional and statutory provisions of Iowa relative to reserve power over corporations are the following:

Section 12, Article 8, Constitution of Iowa:

"Subject to the provisions of this article, the General Assembly shall have power to amend or repeal all laws for the organization or creation of corporations, or

granting of special or exclusive privileges or immunities, by a vote of two-thirds of each branch of the General Assembly; and no exclusive privileges, except as in this article provided, shall ever be granted."

Section 8376, Code of Iowa, 1927, (Sec. 1619, Code of Iowa 1897):

"The articles of incorporation, by-laws, rules and regulations of corporations hereafter organized under the provisions of this title, or whose organization may be adopted or amended hereunder, shall at all times be subject to legislative control, and may be at any time altered, abridged or set aside by law, and every franchise obtained, used or enjoyed by such corporation may be regulated, withheld, or be subject to conditions imposed upon the enjoyment thereof, whenever the general assembly shall deem necessary for the public good."

The reserve power cannot be used to take the property of the corporation.

*Superior Water, Light and Power Co. v. City of Superior*, 263 U. S. 125.

*Chicago, M. & St. P. R. Co. v. Wisconsin*, 238 U. S. 491.

If the reserve power does not permit the taking of the property of the corporation itself, surely it does not permit the taking of the property of a stockholder. The statute attacked as unconstitutional reaches out and, as applied by the Iowa Court, forces a reinvestment in the corporate venture. It goes further and forces the stockholder to pay to the corporation money he never devoted or agreed to devote to the enterprise and compels such payment even after the stockholder has lost his relation as such to the corporation by the sale of his stock.

The reserve power laws came as a result of Justice Storey's suggestion in the *Dartmouth College* case. They are intended to prevent corporate rights and immunities granted

by the state from getting beyond the right of the state to control because of their contractual nature and the clause of the United States Constitution protecting contracts from impairment.

Reserve power laws are justifiable because they pertain to privileges and immunities granted. Certainly Section 10 of Article One, Constitution of the United States cannot be avoided in all cases of contract by a state law providing all contracts of every nature may be changed by law. Can the reserve power be carried further than to prevent privileges and immunities granted by the state from becoming absolute, or beyond reasonable control?

The majority opinion of the Iowa Supreme Court sustained Section 9248-a1, Code of Iowa 1927, as a change of remedy. The sovereign power of a state to alter remedies, or to provide a new and more effectual remedy for the enforcement of contracts so long as the obligation of the contract is not impaired, cannot be doubted. However, the statute challenged in this case creates a new liability and does impair the obligation of contract. The Iowa Supreme Court cites *Bernheimer v. Converse*, 206 U. S. 516 and *Henley v. Myers*, 215 U. S. 373. These cases sustained changes of remedy but did not increase the liability of the stockholder. No substantial right was affected by the remedy change in either of the last cited cases.

In explanation of *Bernheimer v. Converse*, Mr. Chief Justice Hughes said in *Selig v. Hamilton*, 234 U. S. 652, 660.

> "The constitutional validity of these provisions was sustained upon the ground that the statute is a reasonable regulation for enforcing the liability assumed by those who become stockholders in corporations organized under the laws of Minnesota."

*Henley v. Myers, supra,* merely sustained a procedural change. No additional liability or burden was cast upon the stockholder.

*Waggoner v. Flack,* 188 U. S. 595, simply provided a method of rescission by forfeiture where the obligation of contract had been breached. No new burden was placed upon one of the contracting parties. At the close of the opinion it is said:

> "The right to rescind the contract on the part of the state, upon failure of the purchaser to pay as he had agreed, resided in the state at common law, as the supreme court of Texas has held. *Tristoe v. Blum,* 92 Tex. 76, 84, 45 S. W. 998. The act of 1897 simply provided a particular means by which such right might be enforced."

In the case now before the court, a new and different liability is imposed upon the stockholder. A new burden is placed upon appellant. The contract is rendered less valuable. Before the enactment of the statute (Sec. 9248-a1, Code of 1927) a stockholder had a right to abandon the enterprise by letting his stock be sold. In *Turnpike Corp. v. Gould,* 6 Mass. 40, 44 it was said:

> "Persons not interested in having the Turnpike, either from their situation, or private property, may be requested to associate and become corporators. They may not be able to judge of the probable expenses or profits. But if they know that, if the assessments become grievous, they may abandon the enterprise by suffering their shares to be sold, they may on this principle join the association."

Again in *Machine Co. v. Hall,* 121 Mass. 272, 274, Chief Justice Gray said:

> "If it had been intended to impose any personal obligation to pay assessments, a distinct provision to that ef-

> fect would have been inserted, as it has been in the railroad acts * * * In view of the course of legislation and judicial decision in this commonwealth, the suggestion of Chief Justice Parsons (in *Turnpike Corp. v. Gould*, 6 Mass. 40) that any subscriber might as well rely upon the right to abandon the enterprise if the assessments should become burdensome has greatly increased in force, and the adoption of a different rule by this court now would work great injustice."

Section 9248-a1, Code of 1927 (41 G. A. Ch. 181) cannot be sustained as a change of remedy. One test as to whether a change of remedy is reasonable and does not impair the obligation of contract is whether the value of the contract has been lessened.

In *Bronson v. Kinzie*, 42 U. S. 1 How. 311, 315 this court said:

> "Whatever belongs merely to the remedy may be altered according to the will of the state, provided the alteration does not impair the obligation of the contract. But if that effect is produced, it is immaterial whether it is done by acting on the remedy, or directly on the contract itself. In either case, it is prohibited by the Constitution."

In *McCracken v. Hayward*, 2 How. 608, 611, 612, the court used the following language:

> "The obligation of a contract consists in its binding force on the party who makes it. This depends on the laws in existence when it is made. These are necessarily referred to in all contracts, and forming a part of them as the measure of the obligation to perform them by the one party and the right acquired by the other. There can be no other standard by which to ascertain the extent of either than that which the terms of the contract indicate, according to their settled legal meaning. When it becomes consummated, the law defines the duty and the right, compels one party to perform the thing contracted for, and gives the other a right to enforce the performance by the remedies then in force. If any sub-

sequent law affect to diminish the duty, or to impair the right, it necessarily bears on the obligation of the contract in favor of one party to the injury of the other; hence, any law which in its operation amounts to a denial or obstruction of the rights accruing by a contract, though professing to act only on the remedy, is directly obnoxious to the prohibition of the Constitution."

In *Siebert v. Lewis*, 122 U. S. 284, 294, it was said:

"It is well settled by the decisions of this court that the remedy subsisting in a state, when and where the contract is made and is to be performed, is a part of its obligation, and any subsequent law of the state which so affects that remedy as substantially to impair and lessen the value of the contract is forbidden by the Constitution and is therefore void. *Edwards v. Kearzy*, 96 U. S. 597, 607, 24 L. ed. 793, 798."

In *Planters Bank v. Sharp*, 6 How. 301, 327, this court said:

"One of the tests that a contract has been impaired is, that its value has by legislation been diminished."

In *Brine v. Hartford Fire Insurance Company*, 96 U. S. 627, 637, the circuit court of the United States decreed the immediate sale of mortgaged property in disregard of the law of a state in existence at the time the mortgage was made, to the effect that the morgagor should be allowed twelve months after the sale in which to redeem his property therefrom. The Supreme Court reversed the decision, and said:

"At all events, the decisions of this court are numerous that the laws which prescribe the mode of enforcing a contract, which are in existence when it is made, are so far a part of the contract that no change in these laws which seriously interfere with that enforcement are valid, because they impair its obligation within the meaning of the Constitution of the United States."

In the cases where remedy changes have been sustained, the substantial rights of the parties remained practically the same. We do not believe that the legislation challenged in this case can be sustained as a change of remedy. The majority opinion of the Iowa Supreme Court loses sight of the fact that the Constitution is for the protection of substantial and practical rights, and not to foster fanciful theories.

The right of the State to regulate the business of banking does not extend to taking the property of the stockholders. The police power is the power to regulate and not the power to unreasonably appropriate private property.

Under the police power the State cannot reach out and compel a stockholder in a savings bank to devote property to the enterprise. It may regulate the property invested but cannot compel citizens to devote more capital to the enterprise.

*Yoncalla State Bank v. Gemmill*, 134 Minn. 334, 159 N. W. 798.

*Lake Shore & M. S. Ry. Co. v. Smith*, 173 U. S. 684.

## III.

**SECTION 9248-a1, CODE OF IOWA, 1927 (41 G. A. CH. 181) AS APPLIED TO APPELLANT, TAKES THE PROPERTY OF APPELLANT WITHOUT DUE PROCESS OF LAW.**

At the time appellant acquired his stock, he did not consent to or assume a liability such as that imposed by the challenged statute. By becoming a stockholder, appellant perhaps consented to a sale of his stock to satisfy an assessment. It cannot be said that he consented that his stock be sold and in addition he would make the stock worth its full value in the hands of the purchaser.

By the sale of the stock appellant's relationship to the corporation terminated. The corporation sold the stock for

One Dollar ($1.00) per share or a total of Twenty-six Dollars ($26.00). Why should it be deemed the duty of appellant to make this stock worth One Hundred Dollars ($100.00) per share in the hands of the person who purchased it for One Dollar ($1.00) per share? There is no reasonable ground for such a result. If appellant is compelled to pay Ninety-nine Dollars ($99.00) per share to the bank, such payment operates as a taking of the appellant's property and giving it to the new stockholder who has become the beneficial owner of all contributions to the capital stock of the bank.

Legislation that takes the property of one man and gives it to another violates the Fourteenth Amendment of the United States Constitution in that it takes property without due process of law.

*Great Northern Ry. Co. v. Cahill*, 253 U. S. 71.

In *Holden v. Hardy*, 169 U. S. 366, 390, it is said:

> "Recognizing the difficulty in defining with exactness the phrase, 'due process of law,' it is certain that these words imply a conformity with natural and inherent principles of justice, and forbid that one man's property or right to property, shall be taken for the benefit of another, or for the benefit of the State without just compensation."

When appellant became the owner of his stock, the only liability in respect to assessments to restore impaired capital was that his stock might be sold. Many years later a statute is enacted making him liable to a personal judgment for an additional sum of money, after his relationship to the corporation has been terminated. It is an arbitrary and unreasonable imposition in the form of a personal liability of a burden not assumed or consented to. The forced payment does not operate for the benefit of appellant. He no longer

owns the stock. It operates for the benefit of the corporation and the new stockholder.

No theory of police power can justify such a taking of property. The State itself could not so appropriate appellant's property without just compensation, without offending due process of law.

The reserve power of the state does not extend to taking property without due process of law.

*Chicago, M. & St. P. R. Co. v. Wisconsin*, 238 U. S. 491.

In *Lake Shore & M. S. Ry. Co. v. Smith*, 173 U. S. 684, 689 this court said:

> "The police power is a general term used to express the particular right of a government which is inherent in every sovereignty. As stated by Mr. Chief Justice Taney, in the course of his opinion in the License Cases, 5 How. 504, 583, in describing the powers of a state: 'They are nothing more or less than the powers of government inherent in every sovereignty to the extent of its dominions. And whether a state passes a quarantine law, or a law to punish offenses, or to establish courts of justice, or requiring certain instruments to be recorded, or to regulate commerce within its own limits, in every case it exercises the same power; that is to say, the power of sovereignty, the power to govern men and things within the limits of its dominion.'"
>
> "This power must, however, be exercised in subordination to the provisions of the federal constitution. If, in the assumed exercise of its police power, the legislature of a state directly and plainly violates a provision of the constitution of the United States, such legislation would be void."
>
> "The validity of this act is rested by the counsel for the defendant in error upon the proposition that the state legislature has the power of regulation over the corporations created by it, and, in cases of railroad corporations, the same power of regulation, and also full con-

trol over the subject of rates to be charged by them as carriers for the transportation of persons and property. Assuming that the state is not controlled by contract between itself and the railroad company, the question is, how far does the authority of the legislature extend in a case where it has the power of regulation, and also the right to amend, alter, or repeal the charter of a company, together with a general power to legislate upon the subject of rates and charges of all carriers? It has no right, even, under such circumstances, to take away or destroy the property or annul the contracts of a railroad company with third persons."

*Greenwood v. Freight Co.*, 105 U. S. 13, 17.
*Com. v. Essex Co.*, 13 Gray 239.
*People v. O'Brien*, 111 N. Y. 1, 52, 18 N. E. 692.
*City of Detroit v. Detroit & H. P. R. Co.*, 43 Mich. 140, 5 N. W. 275.

"A railroad company, although a quasi public corporation, and although it operates a public highway (*Cherokee Nation v. Southern Kansas Ry. Co.*, 135 U. S. 641, 10 Sup. Ct. 965; *Lake Shore & M. S. Ry. v. Ohio*, 173 U. S. 285, 301, 19 Sup. Ct. 465), has, nevertheless, rights which the legislature cannot take away without a violation of the federal constitution, as stated in *Smyth v. Ames*, 169 U. S. 466, 544, 18 Sup. Ct. 418. A corporation is a person within the protection of the fourteenth amendment. *Railway Co. v. Beckwith*, 129 U. S. 26, 9 Sup. Ct. 207; *Smyth v. Ames*, 169 U. S. 466, 526, 18 Sup. Ct. 418. Although it is under government control, that control must be exercised with due regard to constitutional guaranties for the protection of its property."

The case just cited and quoted from clearly demonstrates the rule that the mere fact, if it be a fact, that the corporation is affected with a public interest does not deprive it of the constitutional guaranties. Its property cannot be taken without due process of law under guise of police power even though the power to alter or repeal the charter be reserved. *A fortiori*, the state cannot take the property of a mere stockholder in such a corporation.

Section 9248-a1 Code of Iowa 1927 is an arbitrary imposition of personal liability by legislative fiat. To enforce such liability is merely to take appellant's property from him. This can not be due process of law. Appellant was never given his day in court as to the creation of the liability, but simply because he was a stockholder in the bank the legislature of Iowa has arbitrarily and unreasonably imposed upon him this liability. The liability is imposed after the stockholder's relationship to the corporation has been terminated by the sale of his stock. The ultimate result is that appellant's property is taken from him and given to another person. The statute as applied by the Iowa Supreme Court offends fundamental principles of justice.

## CONCLUSION.

Section 9248-a1, Code of Iowa, 1927 (41 G. A. Ch. 181) imposed a new liability and burden on appellant and impaired the obligation of contract. It also deprives appellant of his property without due process of law in violation of the Fourteenth Amendment to Constitution of the United States because it takes appellant's property and gives it to the bank or to the new stockholder.

Respectfully submitted,

James M. Parsons,
Des Moines, Iowa,
Counsel for Appellant.

W. E. Wallace,
H. B. Claypool,
Williamsburg, Iowa,
Of Counsel.

# APPENDIX.

## CHAPTER 29, ACTS OF THE TWENTY-FIFTH GENERAL ASSEMBLY OF IOWA.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. That should the capital stock of any state or savings bank organized under the laws of this state be now, or hereafter become impaired by losses or otherwise, the board of directors of such state or savings bank may by consent of the Auditor of State, within thirty (30) days after passage of this act or after such impairment shall come to their knowledge, cause the deficiency to be made good by assessment upon the shareholders pro rata for the amount of stock held by them. Notice of such assessment to be given in writing signed by the president or vice-president and attested by the cashier or secretary of the association with the corporate seal thereof. The deposit of said notice in the postoffice directed to the shareholders at their last known address shall be sufficient for the purpose of this act.

SEC. 2. Should any of the shareholders in any state or savings bank organized under the laws of this state neglect or refuse to pay their pro rata of an assessment made under provisions of section 1 of this act within ninety days from the date of notice thereof, it shall be the duty of the board of directors to cause a sufficient amount of the capital stock held by such shareholder or shareholders to be sold at public auction (after thirty days' notice shall have been given by posting such notice of sale in the office of the bank and by publishing such notice in a newspaper of the city or town in which the bank is located, or in a newspaper published nearest thereto) to make good the deficiency, and the balance, if any, shall be returned to such delinquent shareholder or shareholders.

SEC. 3. Should the board of directors of any state or savings bank organized under the laws of this state, the capital of which now is, or hereafter may become impaired, neglect or refuse to proceed as provided in section 1 of this act, they shall by reason of such neglect or refusal, for a period of ten days after being requested in writing by the owner of two-thirds of the stock of such bank by and with the consent of the auditor of state, become individually liable for the amount of such deficiency and said liability may be enforced at law by any creditor of or stockholder in the association; or in case of its subsequent insolvency, by the receiver thereof.

SEC. 4. This act shall be in force and effect from and after its publication in the Iowa State Register and Des Moines Leader, newspapers published in the city of Des Moines, Iowa.

Approved April 24th, 1894.

I hereby certify that the foregoing act was published in the Iowa State Register May 5 and in the Des Moines Leader May 4, 1894.

W. M. McFARLAND, Secretary of State.

## CODE OF IOWA, 1897.

SEC. 1878. Assessments. Should the capital stock of any state or savings bank become impaired by losses or otherwise, the auditor of the state may require an assessment upon the stockholders, and shall address an order to the several members of the board of directors of such bank, fixing the amount of assessment required, and the board of directors shall, within thirty days after the receipt of such order, cause such deficiency to be made good by a ratable assessment upon the stockholders for the amount of stock held by them, by giving such stockholders notice in writing,

signed by the president or vice-president, attested by the cashier or secretary of the bank, under its seal, if it have one, and deposited in the post-office, addressed to the last known residence of the stockholders, proof thereof to be made by the affidavit of the person so making the deposit, which notice shall state the entire sum to be raised, and the amount due from the addressed stockholder. (25 G. A., ch. 29, Sec. 1.)

SEC. 1879. How enforced. Should any stockholder neglect or refuse to pay his assessment within ninety days from the date of mailing notice thereof, the board of directors shall cause a sufficient amount of the capital stock held by such stockholder to be sold at public auction to make good the deficiency, after giving thirty days' notice thereof by posting the same in the bank, and publishing it in some newspaper of the county in which the bank is located, which notice shall recite the assessment made, the amount due thereunder from the stockholder, and the time and place of sale; proof of all which may be made in the manner provided in the preceding section. After such deficiency is made good, the balance of the proceeds of said sale, if any, shall be paid to the delinquent stockholder. (Same, Sec. 2.)

SEC. 1880. Directors liable. Should the board of directors of such bank having an impaired capital neglect or refuse to proceed as above provided for a period of thirty days after receipt of such order from the auditor of state, they shall become severally liable for any deficiency which liability may be enforced at law by any creditor of or stockholder in the bank, or receiver appointed to wind up its affairs. (Same, Sec. 3.)

## CODE OF IOWA, 1924.

9246. Impairment of capital stock—assessments. Should the capital stock of any state or savings bank become im-

paired by losses or otherwise, the superintendent of banking may require an assessment upon the stockholders, and shall address an order to the several members of the board of directors of such bank, fixing the amount of assessment required. (C., '97, Sec. 1878.)

9247. Compliance with order. The board of directors shall, within thirty days after the receipt of such order, cause such deficiency to be made good by a ratable assessment upon the stockholders for the amount of stock held by them, by giving such stockholders notice in writing, signed by the president or vice president, attested by the cashier or secretary of the bank, under its seal, if it have one, and deposited in the postoffice, addressed to the last known residence of the stockholders, proof thereof to be made by the affidavit of the person so making the deposit, which notice shall state the entire sum to be raised, and the amount due from the addressed stockholder. (C., '97, Sec. 1878.)

9248. Assessment enforced. Should any stockholder neglect or refuse to pay his assessment within ninety days from the date of mailing notice thereof, the board of directors shall cause a sufficient amount of the capital stock held by such stockholder to be sold at public auction to make good the deficiency, after giving thirty days' notice thereof by posting the same in the bank, and publishing it in some newspaper of the county in which the bank is located, which notice shall recite the assessment made, the amount due thereunder from the stockholder, and the time and place of sale; proof of all which may be made in the manner provided in the preceding section. (C., '97, Sec. 1879.)

9249. Balance of proceeds. After such deficiency is made good, the balance of the proceeds of said sale, if any, shall be paid to the delinquent stockholder. (C., '97, Sec. 1879.)

9250. Liability of directors. Should the board of directors of such bank having an impaired capital neglect or re-

fuse to proceed as above provided for a period of thirty days after receipt of such order from the superintendent of banking, they shall become severally liable for any deficiency, which liability may be enforced at law by any creditor of or stockholder in the bank, or receiver appointed to wind up its affairs. (C., '97, Sec. 1880.)

## CHAPTER 181, ACTS 41 G. A. OF IOWA.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. Service of notice—personal liability. Section nine thousand two hundred forty-eight (9248) of the code, 1924, is hereby amended by striking out the word "thirty" in line eight (8) thereof and substituting therefor the word "ten"; also, by inserting after the word "thereof" in line eight (8) of said section the words "by personal service or".

Section nine thousand two hundred forty-eight (9248) is also amended by adding at the end of said section the following: "Should the proceeds of a sale hereunder of all of the stock of any stockholder be insufficient to satisfy his entire assessment liability he shall be personally liable for the deficiency, which may be collected by suit brought in the name of the bank against such stockholder."

SEC. 2. Publication clause. This act being deemed of immediate importance, shall be in full force and effect from and after its publication in the Des Moines Register, a newspaper published in the city of Des Moines, Iowa, and the Washington Evening Journal, a newspaper published at Washington, Iowa.

Approved March 10, A. D. 1925.

I hereby certify that the foregoing act was published in Plain Talk March 12, 1925, and the Washington Evening Journal March 13, 1925.

W. C. RAMSAY, Secretary of State.

## CODE OF IOWA, 1927.

9246. Impairment of capital stock—assessments. Should the capital stock of any state or savings bank become impaired by losses or otherwise, the superintendent of banking may require an assessment upon the stockholders, and shall address an order to the several members of the board of directors of such bank, fixing the amount of assessment required. (C., '97, Sec. 1878; C., '24, Sec. 9246.)

9247. Compliance with order. The board of directors shall, within thirty days after the receipt of such order, cause such deficiency to be made good by a ratable assessment upon the stockholders for the amount of stock held by them, by giving such stockholders notice in writing, signed by the president or vice president, attested by the cashier or secretary of the bank, under its seal, if it have one, and deposited in the postoffice, addressed to the last known residence of the stockholders, proof thereof to be made by the affidavit of the person so making the deposit, which notice shall state the entire sum to be raised, and the amount due from the addressed stockholder. (C., '97, Sec. 1878; C., '24, Sec. 9247.)

9248. Assessment enforced. Should any stockholder neglect or refuse to pay his assessment within ninety days from the date of mailing notice thereof, the board of directors shall cause a sufficient amount of the capital stock held by such stockholder to be sold at public auction to make good the deficiency, after giving ten days' notice thereof by personal service or by posting the same in the bank, and publishing it in some newspaper of the county in which the

bank is located, which notice shall recite the assessment made, the amount due thereunder from the stockholder, and the time and place of sale; proof of all which may be made in the manner provided in the preceding section. (C., '97, Sec. 1879; C., '24, Sec. 9248; 41 G. A., ch. 181, Sec. 1.)

9248-a1. Liability for deficiency. Should the proceeds of a sale under the preceding section of all of the stock of any stockholder be insufficient to satisfy his entire assessment liability he shall be personally liable for the deficiency, which may be collected by suit brought in the name of the bank against such stockholder. (41 G. A., ch. 181, Sec. 1.)

9249. Balance of proceeds. After such deficiency is made good, the balance of the proceeds of said sale, if any, shall be paid to the delinquent stockholder. (C. '97, Sec. 1879; C., '24, Sec. 9249.)

9250. Liability of directors. Should the board of directors of such bank having an impaired capital neglect or refuse to proceed as above provided for a period of thirty days after receipt of such order from the superintendent of banking, they shall become severally liable for any deficiency, which liability may be enforced at law by any creditor of or stockholder in the bank, or receiver appointed to wind up its affairs. (C., '97, Sec. 1880; C., '24, Sec. 9250.)

FILE COPY

FIL
DEC
CHARLES EL

# Supreme Court of the United States

OCTOBER TERM, 1931.

---

No. 158

---

AMOS SHRIVER, *Appellant,*

vs.

WOODBINE SAVINGS BANK OF WOODBINE, IOWA,
*Appellee.*

---

APPEAL FROM THE SUPREME COURT OF THE STATE OF IOWA.

---

## REPLY BRIEF FOR APPELLANT, AMOS SHRIVER.

---

JAMES M. PARSONS,
Des Moines, Iowa,
*Counsel for Appellant.*

W. E. WALLACE,
Williamsburg, Iowa,
H. B. CLAYPOOL,
Williamsburg, Iowa,
*Of Counsel.*

## INDEX.


Page.

ARGUMENT ..... 1

CITATIONS:

Elon Banking and Trust Company v. Burke, 189 N. C. 69.. 5

Hulitt v. Bell, (C. C.) 85 Fed. Rep. 98 ..... 5

Garey v. St. Joe. Mining Company, 32 Utah, 497 ..... 5

Gardner v. Hope Ins. Co., 9 R. I. 194 ..... 5

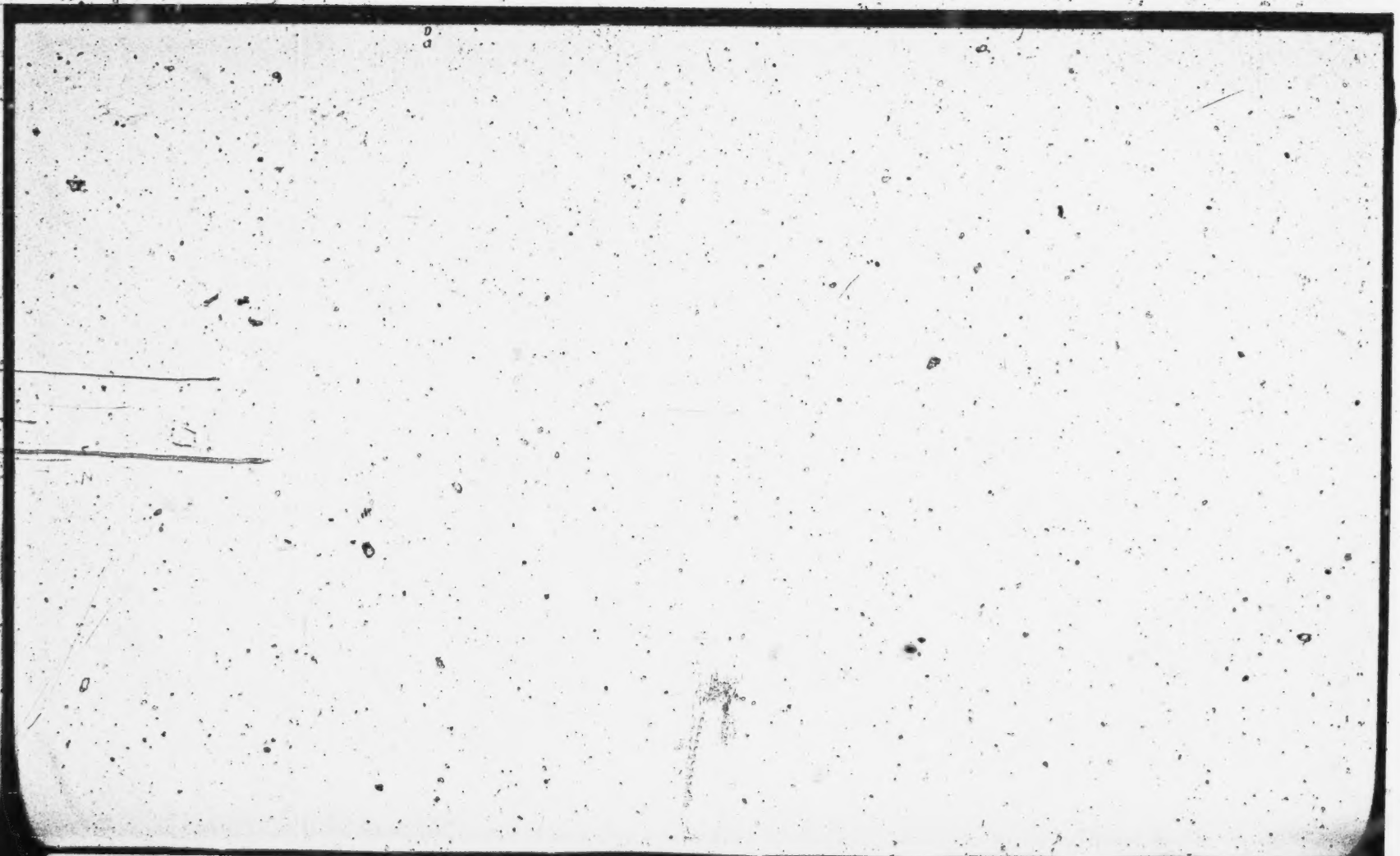
Merchants National Bank of Rome v. Fouche, 103 Ga. 851 ..... 4, 5

Yoncalla State Bank v. Gemmill, 134 Minn. 334 ..... 6

CODE OF IOWA, 1873, (Sec. 1572), Appendix ..... 8

CODE OF IOWA, 1897, (Sec. 1877), Appendix ..... 8

CODE OF IOWA, 1924, (Sec. 9238), Appendix ..... 9



# Supreme Court of the United States

OCTOBER TERM, 1931.

---

No. 158

---

AMOS SHRIVER, *Appellant,*

vs.

WOODBINE SAVINGS BANK OF WOODBINE, IOWA, *Appellee.*

---

## REPLY BRIEF AND ARGUMENT FOR APPELLANT, AMOS SHRIVER.

---

### ARGUMENT.

Appellant desires to briefly reply to Appellee's Argument herein.

#### Division One.

Appellee in Division one of its argument contends that the enactment of the 25th General Assembly of Iowa (25 G. A. Ch. 29) imposed a personal liability upon appellant as a stockholder in appellee bank to pay an assessment to restore impaired capital. The enactment of the 25th General Assembly of Iowa together with the several codifications of that act are set forth in appendix to Appellant's Brief pages 28 to 34.

The title of the original act (25th G. A. Ch. 29) was as fol-

lows: "An act to provide for the better security of depositors in State and Savings Banks under the laws of Iowa." Because of this title appellee contends that a personal liability was intended to be imposed upon the stockholders in order that the purpose of the Act be carried out. In this contention appellee is in error.

There is no doubt that the act of the 25th General Assembly was intended to provide a method of strengthening banks whose capital stock should become impaired and in so doing render depositors in such banks more secure. However, the General Assembly as a part of its act provided and limited the method of accomplishing the desired result. It was never contemplated that a bank whose capital stock was impaired 100% should be kept in operation by assessments under this statute.

At the time of and prior to the enactment of the 25th General Assembly (25 G. A. ch. 29) there existed a statute of Iowa that made it mandatory for the auditor of state to cause to be liquidated any bank he deemed insolvent. The same duty under more recent enactments and codifications is now cast upon the superintendent of banking. Section 1572 Code of Iowa, 1873; Sec. 1877 Code of Iowa, 1897; Section 9238 Code of Iowa, 1924. Appendix page 8.

It was contemplated and intended by the enactment of the 25th General Assembly of Iowa (25 G. A. ch. 29) that a sale of the stock of stockholders, who did not care to contribute further to the enterprise by paying the assessment to make good impaired capital, should cause the deficiency in the capital stock to be made good. For instance, if the capital stock of a bank were impaired 10% or 25% a sale of the stock of any shareholder who refused to pay a pro rata of an assessment would certainly make up the deficiency in the stock. It was the intention of the General Assembly that the stock be sold for sufficient to make good the deficiency in the capital stock and it so declared. It was intended that

the stock be sold only when it would realize a sufficient amount to make the capital of the bank whole. In other words it was intended that the party who purchased the stock should in his purchase pay the deficiency in the capital stock of the bank or the proportion thereof represented by the stock sold. The purchaser by his purchase price payment received the stock and his payment was for his benefit and operated to make the capital of the bank whole.

The statute (25th G. A. Ch. 29) did not contemplate or authorize a sale of the stock for less than sufficient to satisfy the assessment. In fact this statute required that the sale of the stock make good the impairment. This is true because of the language of the statute and because a sale of the stock alone was provided for.

The enactment of the 25th General Assembly provided in part as follows:

> "* * * it shall be the duty of the board of directors to cause a sufficient amount of the capital stock held by such shareholder or shareholders to be sold at public auction * * * to make good the deficiency, and the balance, if any, shall be returned to such delinquent shareholder or shareholders."

This enactment in its original form and as codified provided that a sufficient amount of capital stock be sold to *satisfy the deficiency.* The word "deficiency" refers to deficiency in the capital stock of the bank. The term is so used in Section One of the Act.

The act of the 25th General Assembly in its original form and as codified is found in appendix to Appellant's Brief, pages 28 to 34.

The act did contemplate that the sale of the stock might bring more than sufficient *"to make good the deficiency"* and provided that in such case the balance should be returned to the shareholder. No provision was made for taking care of

the deficiency in the capital stock in case a sale of the shares did not "*make good the deficiency*" because it was never intended or contemplated that there should be a sale for less than a sum sufficient "*to make good the deficiency*" and no such sale was authorized.

It was never intended that the shares of a stockholder be sold for a sum not sufficient "to make good the deficiency", the stockholder's relationship to the corporation terminated, and that he (original stockholder) should remain duty bound or liable to contribute a further sum which could operate only for the benefit of another. No such drastic result was ever contemplated or the legislature would have used plain and definite language to that effect.

Had the legislature intended to render a stockholder personally liable it would have said so. The legislature was not unmindful of the meaning of the phrase "individually liable" because it used the phrase in section 3 of the very act when providing liability of bank directors who refused to make the assessment. Neither was the legislature unmindful that a personal liability is enforceable by an ordinary action at law because it provided for such an action against directors under Section 3 of this very act (25 G. A. Ch. 29).

The original act of the 25th General Assembly of Iowa and as codified is almost a copy of the provision of the National Banking Act relative to assessments upon stockholders to make good impaired capital.

The Supreme Court of Georgia has held that the provision of the National Banking Act contemplates and allows a sale of shares to make good impaired capital only when the sale brings the amount necessary to make good the impairment. *Merchants Nat. Bank of Rome v. Fouche*, 103 Ga. 851, 31 S. E. 87.

The construction of the National Banking Act made by the Supreme Court of Georgia is in accordance with reason

and policy. Likewise it is in accordance with the plain language of the act.

We have found no case holding that a statute providing for assessment upon stockholders to make good impaired capital and providing for sale of the stock to make good the impairment gives rise to a personal liability. The cases of *Hulitt v. Bell*, (C. C.) 85 Fed. Rep. 98 and *Merchants National Bank of Rome v. Fouche*, 103 Ga. 851, 31 S. E. 87 are direct authority that no personal liability was imposed by the National Banking Act which was, in substance and language, the same as the Iowa statute prior to 1925.

The Supreme Court of North Carolina has held, under the statute of that state providing for sale of the stock on assessment to restore impaired capital, no personal liability is imposed. *Elon Banking and Trust Co. v. Burke*, 189 N. C. 69, 126 S. E. 163.

DIVISION TWO.

Appellee, in argument, relies upon cases involving the right of the state, under reserved power to alter or repeal the franchise, to change the liability of stockholders for corporate debts. On this question we cited authority in our Brief showing the distinction between liability for corporate debts and assessments to make good impaired capital. A full discussion of reserve power as applicable to the corporate privilege of immunity from corporate debts and its non-applicability to assessments to restore impaired capital is found in *Garey v. St. Joe Mining Company*, 32 Utah, 497, 91 Pac. 269. This case contains an elaborate discussion of the question of reserve power and nothing can be added by way of argument to what is there said.

Appellee cites *Gardner v. Hope Ins. Co.*, 9 R. I. 194. We believe the case is unsound. It is expressly disapproved in the case of *Garey v. St. Joe Mining Co., supra.* However,

the case of *Gardner v. Hope Ins. Co.* does not involve any question of enforcing a personal liability to restore impaired capital after a sale of the stock. The case merely holds that under reserved power the legislature could render the stock assessable and subject it to sale. While we believe the case is a result of a misunderstanding of the nature and purpose of reserved power laws, yet, it is no authority for the validity of a statute which goes further than merely appropriating the stock. The Iowa statute involved in this case reaches out and, as applied by the Iowa Supreme Court, compels a stockholder to invest more capital. It goes further and compels him to make a payment to the capital stock after he is no longer a stockholder.

If it could be said that non-assessable stock can be made assessable under the reserved power to regulate, yet such holding is not authority for the decision of this case. The Minnesota Supreme Court in *Yoncalla State Bank v. Gemmill*, 134 Minn., 334, said, referring to the case of *Noble State Bank v. Haskell*, 219 U. S. 104:

> "But it is one thing to impose burdens upon the property voluntarily placed in a banking business, and quite another to impose a personal liability upon him, thereby subjecting property which he has not devoted to banking business to be taken from him to pay creditors of the bank * * *".

Appellee's argument fails to distinguish between an assessment to restore impaired capital and the liability of stock holders for corporate debts. The one is not the equivalent of the other.

## CONCLUSION.

Section 9248-a1 Code of Iowa, 1927, is not a provision merely giving an appropriate remedy for an existing right. It is the creation of a new right and also a provision for the

enforcement of such new right. It adds a new burden upon appellant as a stockholder in the bank, impairs the obligation of contract, and takes the property of appellant without due process of law.

Respectfully submitted,

JAMES M. PARSONS,

*Counsel for Appellant.*

W. E. WALLACE,
Williamsburg, Iowa,
H. B. CLAYPOOL,
Williamsburg, Iowa,
*Of Counsel.*

# APPENDIX.

## CODE OF IOWA, 1873.

Sec. 1572. If such auditor is satisfied from said examination or reports that any such institution is insolvent, he shall direct the attorney general to commence the proper proceedings, to have a receiver appointed and said institution wound up, and the assets thereof ratably distributed among the creditors thereof, giving preference in payment to depositors.

## CODE OF IOWA, 1897.

Sec. 1877. Proceedings against by state—receivers. When it shall appear to the auditor of state that any savings or state bank has refused to pay its deposits in accordance with the terms on which such deposits were received, or has become insolvent, or that its capital has become impaired, or has violated the law, or is conducting its business in an unsafe manner, he shall, by an order addressed to such bank, direct a discontinuance of such illegal or unsafe practices, and require conformity with the law. The auditor of state may appoint an examiner to investigate the affairs of any savings or state bank, who shall have power to administer oaths to any person whose testimony may be required on such examination, and to compel his attendance for the purpose thereof, by subpoena or attachment, in the manner now authorized in respect to witnesses in the courts of the state, and all books and papers which it may be found necessary to inspect on the examination so ordered shall be produced, and their production may be compelled in like manner; all expenses thereof shall be paid by the banks examined, in such amount as the auditor of state shall certify to be just and reasonable, but costs taxed as such shall not exceed

those allowed for like services in the district court. If any such bank shall fail or refuse to comply with the demands made by the auditor of state, or if the auditor of state shall become satisfied is in an insolvent or unsafe condition, or that the interests of creditors require the closing of any such bank, he may authorize a bank examiner appointed by him to take possession of any such bank, whereupon the right of levy, of execution, or attachment against such bank or its assets shall be suspended, and the auditor of state may, with the assent of the attorney-general, apply to the district court or a judge thereof for the appointment of a receiver for such bank, and its affairs shall be wound up under the direction of the court, and the assets thereof ratably distributed among the creditors thereof, giving preference in payment to depositors. The auditor of state, with the assent of the attorney-general, shall have authority to apply for the appointment of receivers of savings and state banks, who shall be residents of the county where the bank is located; and no general assignment for the benefit of creditors shall be of any validity. (15 G. A. ch. 60, Sec. 25; C. '73, Sec. 1572.)

CODE OF IOWA, 1924.

Sec. 9238. Liquidation—right of levy suspended. If any such bank shall fail or refuse to comply with the demands made by the said superintendent, or if said superintendent shall become satisfied that any such bank is in an insolvent or unsafe condition, or that the interests of creditors require the closing of any such bank, he may appoint an additional bank examiner to assist him in the duty of liquidation and distribution, whereupon the right of levy, or execution, or attachment against said bank or its assets shall be suspended. (C., '73 Sec. 1572; C., '97, Sec. 1877; 40 G. A., ch. 189, Sec. 1.)

FILE COPY

NOV 24

CHARLES ELMORE

# In the Supreme Court of the United States

OCTOBER TERM, 1931.

No. 158.

AMOS SHRIVER,

*Appellant,*

vs.

WOODBINE SAVINGS BANK OF WOODBINE, IOWA,

*Appellee.*

APPEAL FROM THE SUPREME COURT OF THE STATE OF IOWA.

## BRIEF FOR THE APPELLEE, WOODBINE SAVINGS BANK OF WOODBINE, IOWA.

H. L. ROBERTSON,
Council Bluffs, Iowa,
*Counsel for Appellee.*

C. A. BOLTER,
Logan Iowa,

J. A. MURRAY,
Logan Iowa,
*Of Counsel.*

COCKLE PRINTING CO., LAW BRIEFS, OMAHA

# INDEX


PAGE

SUMMARY OF APPELLEE'S ARGUMENT ..... 1

ARGUMENT:

I. The statute in question (Sec. 9248-a1 of the 1927 Code of Iowa) does not impose a new and additional liability on appellant ..... 3

II. The construction of a state statute by the highest tribunal of the state will be accepted as binding on the federal courts ..... 7

III. Section 8376 of the 1927 Code of Iowa reserves in the legislature the power to enact the law contained in Sec. 9248-a1 ..... 8

IV. Section 9248-a1 of the 1927 Code of Iowa does not take appellant's property with due process of law ..... 14

CONCLUSION ..... 15

APPENDIX:

Chapter 29, Acts of the Twenty-fifth General Assembly of Iowa ..... 17

Code of Iowa, 1873 ..... 19

Code of Iowa, 1927, (Sec. 8376) ..... 19

Code of Iowa, 1927 ..... 19

Code of Iowa, 1927, (Sec. 9251) ..... 21

## CASES CITED


| | Page |
|---|---|
| *Andrew v. Peoples State Bank of Humbolt*, 234 N. W. (Ia) 542, 546 | 3 |
| *Barth v. Pock*, 51 Mont. 418; 155 Pac. 282 | 10 |
| *Citizens Nat. Bk. v. Kentucky*, 217 U. S. 443 | 10 |
| *Gardner vs. Hope Ins. Co.*, 9. R. I. 194; 11 Am. St. Rep. 238 | 10, 11 |
| *Goodsill v. Woodmanse*, 46 N. W. (N. Dak.) 970 | 11 |
| *Henley v. Meyers*, 215 U. S. 373 | 7 |
| *Hinckley v. Schwartschils, et al.*, 95 N. Y. S. 357; 107 App. Div. 470 | 10 |
| *Jones v. Portland*, 245 U. S. 217 | 8 |
| *Leach v. Arthur Savings Bank*, 203 Ia. 1052, 213 N. W. 772 | 3 |
| *Looker v. Maryland*, 179 U. S. 46; 45 Law Ed. 79 | 10 |
| *Munday v. Wisconsin Trust Co.*, 252 U. S. 499 | 7 |
| *New York v. Sohmer*, 237 U. S. 276 | 8 |
| *N. Y. & New Eng. R. R. v. Bristol*, 155 U. S. 556 | 10 |
| *Sherman v. Smith*, 1 Black (U. S.) 587; 17 Law Ed. 163 | 10 |
| *St. Louis etc. R. Co. v. Quinette*, 251 Fed. 773 | 7 |
| *Waggoner v. Flack*, 188 U. S. 595 | 7 |
| *Williams v. Nall*, 108 Ky. 21; 55 S. W. 706 | 10 |


## TEXT BOOKS CITED


| | Pages |
|---|---|
| *Cook on Corporations*, 5th Ed. Vol. I, Sec. 242, p. 521 | 9 |
| *Cook on Corporations*, 5th Ed. Vol. II, Sec. 501 | 10 |
| *Morawetz on Corporations*, (2nd. Ed.) Vol. 2, p. 1098 | 11 |

# In the
# Supreme Court of the United States

**OCTOBER TERM, 1931.**

**No. 158.**

AMOS SHRIVER,

*Appellant,*

vs.

WOODBINE SAVINGS BANK OF WOODBINE, IOWA,

*Appellee.*

**APPEAL FROM THE SUPREME COURT OF THE STATE OF IOWA.**

## BRIEF FOR THE APPELLEE, WOODBINE SAVINGS BANK OF WOODBINE, IOWA.

The appellant's statement of the facts of this case is fair and sets forth the matters necessary for a correct understanding of the questions involved in this appeal.

## SUMMARY OF APPELLEE'S ARGUMENT.

I.

Section 9248-a1 of the Code of Iowa of 1927 (Chapter 181, 41st G. A. of Iowa) imposes no new nor additional liability on the appellant as a stockholder in the appellee

bank for the payment of an assessment against him to restore impaired capital, and it does not impair the obligation of appellant's contract, for the reasons:

1. Sections 9246-7-8 of the 1927 Code of Iowa which have been, since the latest reincorporation of appellee bank, a part of appellant's contract, are the statutes which imposed a personal liability on appellant for the payment of assessments against him to restore impaired capital.

2. Section 9248-al of the 1927 Code of Iowa, does not impose a liability on appellant which did not exist before its enactment, but provides only a remedy for the enforcement of a liability which already existed.

II.

The construction placed upon Sections 9246, 9247, 9248, 9248-al of the 1927 Code of Iowa by the Supreme Court of Iowa in this case, has become a part of the statutes, and will be accepted by this Court as binding upon it.

III.

Had Sections 9246-7-8 and 9248-al been construed to impose a new, additional and greater liability upon the appellant, Section 9248-al would still be constitutional as not impairing the obligations of appellant's contract, for the reason:

1. That long prior to the time when appellant acquired his stock in appellee bank, the reserve statute of Iowa was enacted (Iowa Code of 1873, Sec. 1090; Iowa Code 1927, Sec. 8376; Appendix page 19).

IV.

Section 9248-a1 of the Code of Iowa is not unconstitutional as violating the due process clause of the constitution.

## ARGUMENT.

### I.

**The statute in question (Sec. 9248-a1 of the 1927 Code of Iowa) does not impose a new and additional liability on appellant.**

The personal liability of the appellant as a stockholder in the appellee bank for the payment of an assessment to restore impaired capital was imposed in 1894 by the 25th General Assembly of Iowa, Chapter 29, (Appendix page 17) and that law is now embodied in Sections 9246-7-8 of the 1927 Code of Iowa. The law found in these sections of the Iowa Code has always been a part of appellant's contract as a stockholder in the appellee bank.

The Supreme Court of Iowa has determined in this case (R. 56, 57, 58, 59, 60, 61, 62, 63 and 64) that Secs. 9246—47-48 of the 1927 Code of Iowa (25th G. A. of Iowa, Chap. 29), impose a personal liability on the stockholders of state and savings banks for the payment of assessments made thereunder to restore impaired capital. This is the first time in Iowa that these statutes have been construed as to this point. The cases of *Leach v. Arthur Savings Bank,* 203 Iowa 1052, 213 N. W. 772, and *Andrew v. Peoples State Bank of Humbolt,* 234 N. W. (Iowa) 542, 546, did not directly involve the question, and what

is said in these cases on the proposition is dicta. These cases just mentioned involved only the question of the right of a stockholder to offset the amount paid by him on an assessment to restore impaired capital against his statutory liability due from him after the insolvency and closing of the bank provided for in Sec. 9251 of the 1927 Code of Iowa. But whatever view may be taken of the language of these cases, the direct holding in this case to the contrary on this matter is controlling, this being the later decision.

The construction of the Supreme Court of Iowa placed on Secs. 9246-47-48 of the 1927 Code of Iowa in this case, is the correct construction and is sound logically. The statutes show clearly by their language that the legislature intended to and did impose on stockholders of state and savings banks a personal liability for the payment of assessments to restore impaired capital. Throughout these statutes reference is made to the liability of the *stockholder* for the assessment; the reference is not made to the stock. These statutes are set out in the Appendix hereto at page 19-20 with the word "stockholder" italicized by ourselves for the purpose of making clear what we are here contending.

There are also other reasons which make it clear that such was the intention of the legislature: The title of the original act embodying this law (25th. G. A. of Iowa, Chap. 29, Appendix page 17 which we have set out for the purpose of showing the title) is as follows: "AN ACT to provide for the better security of depositors in State and savings banks under the laws of

Iowa." If no personal liability was intended to be imposed on the stockholder, the law would utterly fail of its purpose "to better secure depositors" in every case like the present one wherein the stock could not be sold for any appreciable amount and wherein the sale of the stock completely failed to repair the stock. It is clear that the statute is intended to cause to be made good any impairment of the stock. The statute mentions the *deficiency*. If only the stock were liable and the intention of the law was to look no farther than the amount received from the sale of the stock, there would really never be any deficiency.

2. The Woodbine Savings Bank was reorganized and reincorporated by the stockholders in the year 1911, and it was during the bank's corporate existence under this re-incorporation that the assessment in this case was made. The provisions of Secs. 9246-47-48 of the 1927 Code of Iowa have at all times constituted a part of appellant's contract as a stockholder in appellee bank; the appellant agreed to be liable for and to pay an assessment to repair his stock; he agreed to abide by the law then in force to better secure depositors in the bank by keeping his stock unimpaired.

With these provisions of the statute a part of appellant's contract, the obligations thereof could not be impaired by Sec. 9248-a1 of the 1927 Code of Iowa which provides for the collection of an amount necessary to make whole the stock he held under that contract. This statute merely provides a remedy for the enforcement of the personal liability which was originally created by the

25th. G. A. of Iowa, Chapter 29. Prior to the enactment of Sec. 9248-al, the remedy for the enforcement of this liability *up to the value of the stock,* was by the sale of the stock; the *statute* provided no remedy for the collection of a deficiency that might exist after the sale of the stock; this remedy, we suggest, was left to equity which, according to its old maxim, never suffers a right or liability to be without a remedy for its enforcement.

Contrary to the statement of appellant's counsel (Appellant's Brief Page 11) that "In the present case the Iowa Court says there was always a personal liability resting on the stockholder to pay an assessment to restore impaired capital, but there was no way of enforcing it", the Supreme Court of Iowa expressly refrained from deciding the point as to whether there was no way of enforcing the payment of the assessment, in this language (R. 64):

> "Conceding, without deciding, that under the original statute, the remedy was limited to the confiscation of the stock, yet that remedy, such as it was, arose for the purpose of enforcing a personal liability against the stockholder."

It is plain, as we have argued above, that the intention of the legislature in Secs. 9246-47-48 was to provide law to compel the stockholder to keep his stock unimpaired "for the better security of depositors in state and savings banks", and the construction now placed upon these statutes by the Supreme Court of Iowa which is now a part of the statutes makes this intention clear. This intention of the legislature, which is the controling factor, precludes the thought that the

sale of stock was an exclusive remedy for the enforcement of the personal liability.

Under the well-established principle that a shareholder in a corporation has no vested right in a particular remedy by which his liability as such may be enforced against him and that the remedy may be changed without impairment of the stockholder's contractual rights, Sec. 9248-a1 of the 1927 Code of Iowa is not violative of the constitution.

*Waggoner vs. Flack,* 188 U. S. 595;

*Henley vs. Myers,* 215 U. S. 373.

## II.

**The construction of a state statute by the highest tribunal of the state will be accepted as binding on the federal courts.**

It is a familiar rule supported by numerous authorities, that this Court will adhere to, follow and be bound by the construction placed upon a state statute by the highest judicial tribunal of that state. The construction becomes a part of the statute and binds the federal courts as the text of the statute itself.

*Munday vs. Wisconsin Trust Co.,* 252 U. S. 499.

This is true although this Court, if it were exercising its own independent judgment, would give the opposite or a different construction to the statute.

*St. Louis etc. R. Co. v. Quinette,* 251 Fed. 773.

To the end of giving weight to the construction placed upon a state statute by a state court in the de-

termination as to whether the state statute violates the federal constitution, this Court will accept the construction of the state court as correct.

*New York v. Sohmer,* 237 U. S. 276.

The decisions of state courts construing statutes of that state are entitled to great respect, especially where, as in this case, that construction agrees with the very evident intention of the legislature in enacting the statute, and that construction is in conformity with justice.

*Jones v. Portland,* 245 U. S. 217.

The strongest reason why this Court should accept the interpretation of these Iowa statutes by the Supreme Court of Iowa, is that the interpretation is logically sound, as we have argued in DIVISION I hereof. When this construction by the Iowa Court has been accepted as correct, it must follow that the statutes as applied to this case, are not repugnant to the constitution.

## III.

**Section 8376 of the 1927 Code of Iowa reserves in the legislature the power to enact the law contained in Sec. 9248-a1.**

Section 9248-a1 would still be constitutional as not impairing the obligations of appellant's contract, though it were determined that the statute imposed a new and additional liability upon the appellant.

1. It is well understood that the laws in force at the time the stockholder in a corporation acquires his stock is a part of the stockholder's contract wtih the state,

with the corporation, and with the other stockholders. Long prior to the time when appellant took his stock in the Woodbine Savings Bank and at all times since, there was and has been what is known as a reserve statute in force in the State of Iowa. This statute first appeared in the Iowa Code of 1873, Sec. 1090, and and is now Sec. 8376 of the 1927 Code of Iowa. (Appendix page 19). This statute has always been a part of appellant's contract. It provides that the state may alter, amend, repeal or set aside by law the articles of incorporation, by-laws, rules and regulations of corporations, and every franchise obtained, used or enjoyed by a corporation is subject to regulation by the Legislature or may be withheld or made subject to conditions imposed upon the enjoyment of such franchise, whenever the General Assembly shall deem it necessary for the public good.

This reserve statute empowers the legislature to impose liabilities and burdens upon stockholders in corporations where none existed before.

> "Where the State has reserved the power to alter, repeal, or amend the charter, it may authorize the corporation to levy assessments on its stockholders, in addition to the subscription for their stock. The reason of this rule is clear. A limited liability is a part of the corporate privileges conferred. The right to repeal the franchise includes the right to repeal in part or altogether the franchise or privileges of limited liability."
>
> *Cook on Corporations,* 5th Ed. Vol. I, Sec. 242, p. 521.

"Under this reserve power, however, the Legislature it is held, may impose a statutory liability upon stockholders after they have incorporated and

gone into business under a charter which does not impose such liability. The exercise of this power by the Legislature, in such a case, is held to be only a repeal of part of the corporate franchises."

*Cook on Corporations*, 5th Ed. Vol. II, Sec. 501.

"A power reserved to the Legislature to alter, amend, or repeal a charter, authorizes it to make any alteration or amendment of a charter granted subject to it which will not defeat or substantially impair the objects of the grant, or any right vested under it and which the Legislature may deem necessary to secure either that object or any public right."

*N. Y. & New Eng. R. R. vs. Bristol*, 155 U. S. 556.

Under such reserve power the Legislature may make non-assessable stock assessable, make the stockholders personally liable for the debts of the corporation, and otherwise increase the burdens of the stockholders.

*Sherman vs. Smith*, 1 Black (U. S.) 587; 17 Law Ed. 163;

*Hinckley v. Schwartschils, et al.*, 95 N. Y. S. 357; 107 App. Div. 470;

*Looker v. Maryland*, 179 U. S. 46; 45 Law Ed. 79;

*Citizens Nat. Bk. v. Kentucky*, 217 U. S. 443;

*Barth v. Pock*, 51 Mont. 418; 155 Pac. 282;

*Williams v. Nall*, 108 Ky. 21; 55 S. W. 706;

*Gardner v. Hope Ins. Co.*, 9 R. I. 194; 11 Am. St. Rep. 238.

This is particularly true of banks because of their very close relations with the fiscal affairs of the people and the revenues of the state.

"The nature of a corporation is, therefore, an important consideration in determining the extent of the reserved right of the state to alter or amend its charter. In some corporations the public is interested, and in others it is not; and the right of interfering in their management varies accordingly."

*Morawetz on Corporations,* (2nd. Ed.) Vol. 2, page 1098.

It is the province of the state to regulate, restrain and govern the business of banking and safeguard the public as depositors.

*Goodsill v. Woodmanse,* 46 N. W. (N. Dak.) 970.

The assessment in the case of *Gardner vs. Hope Ins. Co.,* 9 R. I. 194; 11 Am. St. Rep. 238, was for the purpose of repairing capital. It was contended that since the stockholder owned his stock fully paid up prior to the passage of the act which provided for the assessment, that such act was unconstitutional as to him and that he could not be subjected to additional burdens without his consent. That case is not so strong in its facts as the case at bar, in favor of the assessment, but the court there held:

"The legislature have reserved the power, at any time to alter or repeal the charter, or any of its provisions. The corporations accepted it upon this condition, and agreed that its provisions might be changed, and every purchaser of stock in this company has assented to these terms, and has agreed to hold his shares subject to this liability to change."

The contention of the appellant here seems to be that the statute (9248-a1) is unconstitutional because the assessment is not for the purpose of paying the debts of

the corporation; that if it were for the payment of debts, it would be constitutional because it would then be a repeal of the corporate franchise of limited liability. However, there are other franchises granted by the state, such as the franchise of corporate existence and perpetual succession, and there is also a franchise of limited liability for the furnishing of security to depositors. If appellant had been conducting a private bank or was a member of an unincorporated association doing a banking business, his entire individual property would have been the security to depositors, whereas in the Woodbine Savings Bank, a corporation, he is compelled to pay only an assessment of 100% on his stock for the "better security of depositors".

Indeed, is not the assessment to restore impaired capital for the purpose of paying indirectly, if not directly, the debts of the corporation? Such assessment is in theory and in fact for the purpose of paying the debts of the bank. The payment is not direct to the depositors and creditors, but it goes directly to take out worthless paper and to make up losses incurred by the bank in handling funds of depositors while the stockholder was a member of the organization. The funds raised by the assessment are placed in the bank to enable the bank to pay the depositors whenever they call for their money.

Aside from any consideration of franchises, under the reserve statute the Legislature has the power to make any reasonable regulations for the protection of the depositors and creditors of the bank which is for the public

good. Contrary to the appellant's contention and the dissenting opinion in the Supreme Court of Iowa in this case, Sec. 9248-a1 is meant to affect only the contract between the stockholder and the state, and not the contract between the stockholder and the corporation or the one between the stockholders themselves. The statute seeks to regulate the relation between the stockholder and the public. The assessment provided for in the statute is not for the purpose of making money for the corporation or for enriching any person who might purchase stock put up for sale; it is for the purpose of providing better security for depositors, who are the general public. The purchaser of the stock of a delinquent stockholder at a sale under the statute might or might not profit by the transaction. When the stockholder allows the stock sold, he does so because he thinks there is no profit in it, else he would pay the assessment himself and keep the stock and reap a profit; the stockholder is given his day and when he allows the sale of his stock, he does it to disassociate himself from the corporation. Any profit accruing to his successor is an incidental matter; it is a matter in which the state and the law are not concerned.

The regulation of the business of banking is a proper exercise of the State's police power, and Code Sec. 9248-a1 is a provision enabling the exercise of that power. The purpose of the statute is to enable the State to compel the performance of one of the terms of the stockholder's agreement, to-wit: the agreement to keep his stock unimpaired and to provide at all times the necessary security for depositors and creditors of the bank. If the position of the minority of the Iowa Supreme Court is

correct wherein they say (R. 77): "We do not think that it is within the legislative function to confer such power upon any agency; nor indeed do we think that the Legislature itself could exercise such a power," it would be impossible ever to enforce the collection of an asessment to restore impaired capital and a statute for the purpose would be useless.

## IV.

**Section 9248-al of the 1927 Code of Iowa does not take appellant's property with due process of law.**

It is not unreasonable and unjust that a stockholder should be compelled to make good any impairment of the capital stock of a bank held by him. According to the construction given to the statutes involved herein, it was the stockholder's agreement when he took his stock to be personally liable for such assessment. The assessment is no more unjust than the assessment or statutory liability for the payment of credtiors after the insolvency and closing of the bank. If the bank were insolvent and closed, the stockholder would be liable for an assessment of 100%. The assessment to restore impaired capital—in case the stockholder allows his stock to be sold as in this case—is appropriately made the ultimate liability of the stockholder. When his stock is sold, the stockholder is out; to him the bank is the same as closed. Both the assessment to restore impaired capital and the statutory liability in case of insolvency are limited in amount to 100%; the statutory liability is limited to this amount by statute (Sec. 9251 of the 1927 Code of Iowa, Appendix, page 21), and the assessment to restore impaired capital is limited to 100% because the stock could never be im-

paired more than 100%. Nothing can be impaired more than 100%. Because they are both the ultimate liability of the stockholder and because they are both limited to the same amount, it is our contention that the one is the fair equivalent of the other.

It is asked, "Why should it be deemed the duty of appellant to make this stock worth One Hundred Dollars ($100.00) per share in the hands of the person who purchased it for One Dollar ($1.00) per share?" The answer is: Because appellant's agreement has always been since he acquired the stock, to keep it unimpaired "for the better security of depositors" and the fact that this may inure to the benefit of the purchaser of the stock is incidental and immaterial.

The legislation under consideration does not in reality take the property of appellant and give it to another person; it places the property in a fund for the security of depositors. This is the theory and effect of all legislation enacted for the purpose of restoring impaired capital and it is not violative of the due process clause of the constitution.

## CONCLUSION.

Section 9248-a1 of the 1927 Code of Iowa is not unconstitutional for the following reasons: FIRST, it provides only a permissible change in the remedy for the enforcement of a liability for an assessment to restore impaired capital. SECOND, if it had imposed a new and additional liability on the stockholder, the legislature

was authorized to impose that liability because of the reserve statute, Sec. 8376 of the 1927 Code of Iowa.

The statute is not unreasonable and unjust and does not violate the due process clause of the constitution.

The construction placed upon the statutes, Secs. 9246-47-48-48al of the 1927 Code of Iowa by the Supreme Court of Iowa, is correct, and under the rules this construction will be binding upon this Court.

Respectfully submitted,

H. L. ROBERTSON,
Council Bluffs, Iowa,
*Counsel for Appellee.*

C. A. BOLTER,
J. A. MURRAY,
Logan, Iowa,
*Of Counsel.*

## APPENDIX.

### Chapter 29, Acts of the Twenty-fifth General Assembly of Iowa.

AN ACT to provide for the better security of depositors in State and savings banks organized under the laws of Iowa.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. That should the capital stock of any state or savings bank organized under the laws of this state be now, or hereafter become impaired by losses or otherwise, the board of directors of such state or savings bank may by consent of the Auditor of State, within thirty (30) days after passage of this act or after such impairment shall come to their knowledge, cause the deficiency to be made good by assessment upon the shareholders pro rata for the amount of stock held by them. Notice of such assessment to be given in writing signed by the president or vice-president and attested by the cashier or secretary of the association with the corporate seal thereof. The deposit of said notice in the postoffice directed to the shareholders at their last known address shall be sufficient for the purpose of this act.

SEC. 2. Should any of the shareholders in any state or savings bank organized under the laws of this state neglect or refuse to pay their pro rata of an assessment made under provisions of section 1 of this act within ninety days from the date of notice thereof, it shall be the duty of the board of directors to cause a sufficient amount of the capital stock held by such shareholder or

shareholders to be sold at public auction (after thirty days' notice shall have been given by posting such notice of sale in the office of the bank and by publishing such notice in a newspaper of the city or town in which the bank is located, or in a newspaper published nearest thereto) to make good the deficiency, and the balance, if any, shall be returned to such delinquent shareholder or shareholders.

SEC. 3. Should the board of directors of any state or savings bank organized under the laws of this state, the capital of which now is, or hereafter may become impaired, neglect or refuse to proceed as provided in section 1 of this act, they shall by reason of such neglect or refusal, for a period of ten days after being requested in writing by the owner of two-thirds of the stock of such bank by and with the consent of the auditor of state, become individually liable for the amount of such deficiency and said liability may be enforced at law by any creditor of or stockholder in the association; or in case of its subsequent insolvency, by the receiver thereof.

SEC. 4. This act shall be in force and effect from and after its publication in the Iowa State Register and Des Moines Leader, newspapers published in the city of Des Moines, Iowa.

Approved April 24th, 1894.

I hereby certify that the foregoing act was published in the Iowa State Register May 5 and in the Des Moines Leader May 4, 1894.

W. M. McFARLAND,
*Secretary of State.*

**Code of Iowa, 1873.**

Sec. 1090. The articles of incorporation, by-laws, rules and regulations of corporations hereafter organized under the provisions of this title, or whose organization may be adopted or amended hereunder, shall, at all times, be subject to legislative control, and may be, at any time, altered, abridged, or set aside by law, and every franchise obtained, used, or enjoyed by such corporation, may be regulated, withheld, or be subject to conditions imposed upon the enjoyment thereof, whenever the general assembly shall deem necessary for the public good.

**Code of Iowa, 1927.**

8376. LEGISLATIVE CONTROL. The articles of incorporation, by-laws, rules and regulations of corporations hereafter organized under the provisions of this ttle, or whose organzation may be adopted or amended hereunder, shall at all times be subject to legislative control, and may be at any time altered, abridged or set aside by law, and every franchise obtained, used or enjoyed by such corporation may be regulated, withheld, or be subject to conditions imposed upon the enjoyment thereof, whenever the general assembly shall deem necessary for the public good. (C., '73, Sec. 1090; C., '97, Sec. 1619; C., '24, Sec. 8376).

**Code of Iowa, 1927.**

9246. IMPAIRMENT OF CAPITAL STOCK—ASSESSMENTS. Should the capital stock of any state or savings bank become inpaired by losses or otherwise, the superintendent of banking may require *an assessment upon the stockholders,* and shall address an order to the

several members of the board of directors of such bank, fixing the amount of assessment required. (C., '97, Sec. 1878; C., '24, Sec. 9246.)

9247. COMPLIANCE WITH ORDER. The board of directors shall, within thirty days after the receipt of such order, cause such deficiency to be made good by a ratable *assessment upon the stockholders* for the amount of stock held by them, by giving such *stockholders* notice in writing, signed by the president or vice president, attested by the cashier or secretary of the bank, under its seal, if it have one, and deposited in the postoffice, addressed to the last known residence of the *stockholders*, proof thereof to be made by the affidavit of the person so making the deposit, which notice shall state the entire sum to be raised, and the amount due from the addressed *stockholder*. (C., '97, Sec. 1878; C., '24, Sec. 9247.)

9248. ASSESSMENT ENFORCED. Should any *stockholder* neglect or refuse to pay his assessment within ninety days from the date of mailing notice thereof, the board of directors shall cause a sufficient amount of the capital stock held by such *stockholder* to be sold at public auction to make good the deficiency, after giving ten days' notice thereof by personal service or by posting the same in the bank, and publishing it in some newspaper of the county in which the bank is located, which notice shall recite the assessment made, *the amount due thereunder from the stockholder*, and the time and place of sale; proof of all which may be made in the manner provided in the preceding section. (C., '97, Sec. 1879; C., '24, Sec. 9248; 41 G. A. Chap. 181, Sec. 1.)

**Code of Iowa, 1927.**

9251. LIABILITY OF STOCKHOLDERS. All stockholders of savings and state banks shall be individually liable to the creditors of such corporation of which they are stockholders over and above the amount of stock by them held therein and any amount paid thereon, to an amount equal to their respective shares, for all its liabilities accruing while they remained such stockholders. (C., '97, Sec. 1882; C., '24, Sec. 9251.)

FILE COPY

FILED
Mar 14
FEB 17 19
CHARLES ELMORE C
C

IN THE

# Supreme Court of the United States

OCTOBER TERM, A. D. 1931

No. 158

AMOS SHRIVER
*Appellant,*

vs.

WOODBINE SAVINGS BANK OF WOODBINE, IOWA,
*Appellee.*

APPEAL FROM THE SUPREME COURT OF THE STATE OF IOWA

## BRIEF OF L. A. ANDREW, SUPERINTENDENT OF BANKING OF THE STATE OF IOWA, AMICUS CURIAE AND MOTION TO SUBMIT SAME AND PRESENT ORAL ARGUMENT ON SUBMISSION

JOHN FLETCHER, Attorney General of Iowa,

EARL F. WISDOM, Assistant Attorney General,
*Counsel for Amicus Curiae.*

IN THE

# Supreme Court of the United States

OCTOBER TERM, A. D. 1931

No. 158

AMOS SHRIVER

*Appellant,*

vs.

WOODBINE SAVINGS BANK OF WOODBINE, IOWA,

*Appellee.*

**APPEAL FROM THE SUPREME COURT OF THE STATE OF IOWA**

## BRIEF OF L. A. ANDREW, SUPERINTENDENT OF BANKING OF THE STATE OF IOWA, AMICUS CURIAE AND MOTION TO SUBMIT SAME AND PRESENT ORAL ARGUMENT ON SUBMISSION

JOHN FLETCHER, Attorney General of Iowa,

EARL F. WISDOM, Assistant Attorney General,

*Counsel for Amicus Curiae.*

## MOTION OF L. A. ANDREW, SUPERINTENDENT OF BANKING OF THE STATE OF IOWA TO FILE BRIEF AMICUS CURIAE AND TO PRESENT ORAL ARGUMENT ON SUBMISSION

Comes now L. A. Andrew, superintendent of banking of the State of Iowa, and respectfully moves the Court for leave to file a brief amicus curiae in the within and fore-

going cause and to present oral argument to this Honorable Court on the submission of the said cause thereto, and as grounds therefor states:

Paragraph 1. That he is the duly appointed, qualified and acting superintendent of banking of the State of Iowa, and that as such it is incumbent upon him under the statutes of the said state and the opinions of the Supreme Court thereof, to maintain the solvency of banks organized under and existing by virtue of charters granted to them by, and incorporated under, the laws of the said state:

Par. 2. That the within cause involves the constitutionality of the statutes of the State of Iowa, which provide the method by which, or through which, he may require stockholders to pay assessments for the purpose of repairing, impaired capital stock in said banks; and therefore, affects not only the administration of the banks incorporated under the statutes of the State of Iowa, and the maintenance of solvency of those institutions, but also the rights of depositors in those institutions in so far as the maintenance of their solvency is concerned; and that the issues involved in the said cause are of highest importance to the public, and other persons including depositors in banks chartered under the laws of the State of Iowa.

WHEREFORE, your petitioner prays that he be granted leave to file his brief amicus curiae, and that his counsel be permitted to present oral argument upon the submission of this cause to this Court.

L. A. Andrew, Superintendent of Banking
of the State of Iowa.

By John Fletcher, Attorney General of Iowa,
Earl F. Wisdom, Assistant Attorney General,
*His Counsel.*

## INDEX


Page

*Allen vs. Scott*, 104 Ohio (1922); 436; 135 N. E. 683.... 29

*Anderson vs. The Commonwealth*, 18 Grattan 59 (Va.) 295 at 299..... 15

*Andrew vs. Peoples State Bank of Humboldt*, 234 N. W. 542 at 546..... 37

*Avondale Land Company, et al. vs. Shook, et al.*, 170 Ala. 379; 54 So. 268..... 9

*Bank of Blytherville vs. State*, 148 Ark. (1920) 504; 230 S. W. 550..... 29

*Bernheimer vs. Converse*, 206 U. S. 516; 27 S. Ct. 755 at 759; 51 L. ed. 1164.....43, 53, 54

*Bryan vs. Bullock*, 84 Fla. (1922) 179; 93 So. 182..... 27

*Brotherhood of American Yeoman vs. Mantz*, 23 Ariz. 610; 206 Pac. 403 at 405.....43, 44

*Citizens Sav. Bank vs. Owensboro*, 173 U. S. 636..23, 25, 32

*Commonwealth vs. Barney*, 24 Ky. L. R. 2352..... 38

*Croninger vs. Bethel Grove Camp Grounds Assoc.*, 161 S. W. (Ky.) 230-232..... 3

*Davis vs. Moore*, 130 Ark. (1917) 128; 197 S. W. 295.... 27

*Dozier vs. Thornton*, 19 Ga. 325..... 9

*Duke vs. Force*, 120 Wash. (1922) 599; 208 Pac. 67..... 30

*Gardner vs. Hope Ins. Co.*, 9 R. I. (1869) 194; 11 Am. Rep. 238 ..... 17

*Gary vs. St. Joe Mining Company*, 34 Utah, 497..... 24

*Greenwood vs. Union Freight R. Co.*, 105 U. S. 13..22, 25, 58

*Gregg vs. Granly Mining Co.*, 164 Mo. 616 at 627..... 16

*Henley vs. Myers*, 215 U. S. 373; 30 S. Ct. 148 at 152; 54 L. ed. 240.....55, 56

*Hill vs. Merchants Mutual Insurance Co.*, 134 U. S. 515; 10 S. Ct. 589; 33 L. ed. 994.....48, 53

*Hinckley vs. Schwartzchild*, 95 N. Y. S., 357; 107 N. Y. 470 22

*In re Oliver Lee & Company's Bank*; 21 N. Y. (1860) 9... 20

*In re Reciprocity Bank*, 22 N. Y. (1860) 9..... 22

*Johnson vs. Libby*, 111 Me., 204; 88 Atl. 647 at 649..... 47

*LaMar vs. Taylor*, 141 Ga. 227.....46, 47

## INDEX


Page

*Leach vs. Arthur Savings Bank*, 203 Iowa 1052; 213 N. W. 772 ..... 37

*Looker vs. Maynard*, 179 U. S. 46; 45 L. ed. 79 ..... 22, 23

*Lynch vs. Jacobson*, 55 Utah 129 ..... 48

*McGowan vs. McDonald*, 111 Calif., 57; 52 Am. St. Rep. 149; 43 Pac., 418 ..... 21

*Moore vs. Ripley*, 106 Ga., 556 ..... 44

*Noble vs. Haskell*, 219 U. S. 104 ..... 30

*Northwestern Trust Company vs. Bradbury*, 117 Minn., 83; 134 N. W. 513 ..... 30

*Sherman vs. Smith*, 1 Black (U. S. 1861) 587; 17 L. ed. 163 ..... 21

*South Bay Meadow Dam Co. vs. Gray*, 30 Maine (1859) 547 ..... 19, 20

*St. John vs. Building and Loan Assoc.*, 136 Iowa, 448 ..... 24

*Somerville vs. St. Louis M. & M. Co.*, 46 Mont., 268; 127 Pac. 464; L. R. A. 1915-B 811 ..... 18

*Trustees of Dartmouth College vs. Woodward*, 4 Wheaton, 518; 4 L. ed. 629 ..... 12

*Waggoner vs. Flack*, 188 U. S. 595; 23 S. Ct. 345 at 348; 47 L. ed. 609 ..... 36, 49, 50, 51

*Winfree vs. Riverside Cotton Mills, et al.*, 113 Va. 717, 75 S. E. 309 ..... 9, 14

*Yoncalla State Bank vs. Gemmill*, 134 Minn. 334 ..... 24

Section 1090, Code of Iowa 1873 ..... 12, 24

Section 1619, Code of Iowa 1897 ..... 12, 24

Section 1879 and 8, Code of Iowa 1897 ..... 6

Section 8376, Code of Iowa 1924-7 ..... 12, 24

Sections 9246, 9247, 9248, 9249, Code of Iowa 1924 ..... 11, 12, 34

Chapter 29, Laws Twenty-fifth General Assembly ..... 39, 40

Chapter 181, Laws Forty-first General Assembly codified as Section 9248-a1, Code of Iowa 1927 ..... 33, 35, 37, 41

Cook on Corporations, 8th Ed. Para. 492-3 ..... 8

Lewis' Sutherland on Statutory Construction, 2d. Ed. Vol. 2, Sec. 340 ..... 38, 39

Story's Commentaries on the Constitution, Section 459 ..... 38

## STATEMENT OF THE CASE

The statement of the case by the appellant found in his brief is a fair and complete statement of the facts in this cause and sets forth all of the matters necessary for the determination thereof. The opinion is found in 236 N. W., p. 10.

## BRIEF POINTS AND AUTHORITIES RELIED UPON TO SUSTAIN THE FINDINGS AND OPINION OF THE SUPREME COURT OF IOWA

### I

**The articles of incorporation of a corporation, together with the statutes, constitute the contract:**

**a. Between the state and the corporation;**

**b. Between the corporation and its stockholders;**

**c. Between the State and the stockholders;**

**d. Between the stockholders inter sese.**

Thompson on Corporations, third edition, Volume 1, Section 210;

Cook on Corporations, 8th Ed., Paragraph 492-3;

*Croninger vs. Bethel Grove Camp Grounds Asso.*, 161 S. W. (Ky.) 230-232;

*Avondale Land Company vs. Shook*, 170 Ala. 379, 54 So. 268;

*Dozier vs. Thornton*, 19 Ga. 325;

*Winfree vs. Riverside Cotton Mills*, 119 Va. 717.

II

**The legislature of the State of Iowa has reserved to itself, long prior to the incorporation of the appellee bank, the power to alter, abridge or set aside by law, the articles of incorporation of a corporation, and such reserved power is a part of the contract between the corporation and the state, and between the stockholders and the state; and such alteration, pursuant thereto, is not an impairment of the obligation of the contract, in violation of Section 10, Article 1, Constitution of the United States, nor of due process clause of the Fourteenth Amendment thereto.**

Section 1090 Code of Iowa 1873;

Section 1619 Code of Iowa 1897;

Section 8376 Code of Iowa 1924-7;

*St. Joe I. M. & St. Paul R. R. Co. vs. St. Paul,* 173 U. S. 404;

*Winfree vs. Riverside Cotton Mills,* 113 Va. 717, 75 S. E. 309;

*Somerville vs. St. Louis M. & M. Co.,* 46 Mont. 268, 127 Pac. 464, L. R. A. 1915-B 811;

*Anderson vs. The Commonwealth,* 18 Gratten (59 Va.) 295 at 299;

*Avondale Land Co. vs. Shook,* 170 Ala. 379, 54 So. 268;

*Greenwood vs. Union Freight R. Co.,* 105 U. S. 13;

*Arkansas Stove Co. vs. State,* 94 Ark. 27, 27 L. R. A. 255;

*Gregg vs. Granby Mining Co.,* 164 Mo. 616 at 627;

*Citizens Savings Bank vs. Owensboro,* 173 U. S. 636;

*In re Lee's Bank of Buffalo,* 21 N. Y. 9;

*Sherman vs. Smith,* 1 Black 587, 17 Law Ed. 163;

*Hinckley vs. Schwartzchild,* 95 N. Y. S. 357, 107 N. Y. 470;

*Looker vs. Maynard,* 179 U. S. 46, 45 L. ed. 79;

*Citizens National Bank vs. Kentucky,* 217 U. S. 443, 54 L. ed. 832;

*Gardner vs. Hope Insurance Co.,* 9 R. I. 194; 11 Am. St. Rep. 238;

*Stockwell vs. Supreme Court I. O. F.,* 216 Fed. 205, at 207;

*McGowan vs. McDonald,* 111 Calif. 57, 52 Am. St. Rep. 149, 43 Pac. 418;

*South Bay Meadow Dam Co. vs. Gray,* 30 Me. 537;

*In re Reciprocity Bank,* 22 N. Y. 9.

## III

**A banking corporation is a corporation of such public character and peculiar nature that it comes within the meaning of the legislative control section, and its charter may be altered, or amended, by law to increase the liability of the stockholders under the reserved power of the legislature whenever the legislature deem it for the public good.**

*Davis vs. Moore,* 130 Ark. (1917) 128, 197 S. W. 295;

*Bryan vs. Bullock,* 84 Fla. (1922) 179, 93 So. 182;

*Anderson vs. Commonwealth,* 18 Grat. (Va. 1868) 295;

*Bissell vs. Heath,* 98 Mich. (1894) 472, 57 N. W. 585;

*Deloria vs. Atkins,* 158 Mich. (1909) 232, 122 N. W. 559;

*Garner vs. Hope Ins. Co.,* 9 R. I. (1869) 194, 11 Am. Rep. 238;

*In re Oliver Lee & Co.'s Bank,* 21 N. Y. (1860) 9;

*South Bay Meadow Dam Co. vs. Gray,* 30 Maine (1859) 547;

*In re Reciprocity Bank,* 22 N. Y. (1860) 9;

*Sherman vs. Smith,* 1 Black (U. S. 1861) 587, 17 L. Ed. 163;

*McGowan vs. McDonald,* 111 Ga. (1896) 57, 43 Pac. 418, 52 Am. St. 149;

*Hagmayer vs. Farley,* 23 N. Y. (App. Div.) (1897) 426, 48 N. Y. S. 336;

*Bank of Blytherville vs. State,* 148 Ark. (1920) 504, 230 S. W. 550;

*Allen vs. Scott,* 104 Ohio (1922) 436, 135 N. E. 683;

*Duke vs. Force,* 120 Wash (1922) 599, 208 Pac. 67.

## IV

**The appellant stockholder was liable for an assessment under the provisions of Sections 1878 and 1879 of the Code of Iowa, 1897 (Sections 9246-7-8, Code of 1924), and the statute challenged herein, Chapter 181 Laws of the Forty-first General Assembly (Section 9248-A1 Code of Iowa 1927) provided merely for a method of enforcing that liability, and does not impose any additional liability upon the appellant.**

Section 1879-8 Code of Iowa 1897;

Sections 9246-9247-9248-9249 Code of Iowa 1924;

Chapter 181 Laws Forty-first General Assembly codified as Section 9248-a1 Code of Iowa 1927;

*Bernheimer vs. Converse,* 206 U. S. 516, 27 S. Ct. 755 at 759, 51 L. ed. 1163;

*Henley vs. Myers,* 215 U. S. 373, 30 S. Ct. 148 at 152, 54 L. ed. 240;

*Waggoner vs. Flack*, 188 U. S. 595, 23 S. Ct. 345 at 348, 47 L. ed. 609;

*Conley vs. Barton*, 260 U. S. 677, 43 S. Ct. 238, 67 L. ed. 456;

*Hill vs. Merchants Mutual Insurance Co.*, 134 U. S. 515, 10 S. Ct. 589, 33 L. ed. 994;

*Barnitz vs. Beverly*, 163 W. S. 118, 16 S. Ct. 1042, 41 L. ed. 93;

*Brotherhood of American Yeoman vs. Manz*, 23 Ariz. 610, 206 Pac. 403 at 405;

*Johnson vs. Libby*, 111 Me. 204, 88 Atl. 647 at 649.

V

**Such change in remedy for the enforcement of said liability did not impair the obligation of the stockholder's contract, nor deprive him of property without due process of law.**

See cases cited in Division IV.

ARGUMENT

I

**The articles of incorporation of a corporation together with the constitutional and statutory provisions in force and effect at the time relating to corporations constitute the contract.**

**A. Between the state and the corporation,**

**B. Between the state and the stockholders,**

**C. Between the corporation and the stockholders,**

**D. Between the stockholders inter sese.**

The burden of appellant's argument is that Chapter 181, Laws of the Forty-first General Assembly of Iowa, and codified as Section 9248-a1 of the Code of Iowa 1924, providing for judgment against him after his stock in the appellee bank was sold to repair impaired capital stock, is in violation of the obligation of his contract in violation of Article 1, Section 10 of the Constitution of the United States and deprives him of his property without due process of law.

It is, therefore, incumbent upon the court to determine what constituted the contract between the appellant stockholder and the State of Iowa, prior to the enactment of Chapter 181, Laws of the Forty-first General Assembly, which became effective March 13, 1925.

It is both elementary and fundamental that the constitution and statutes relating to corporations and in force and effect at the time of the reincorporation and renewed charter of appellee in May, 1911, were a part of the contract and that the articles of incorporation including those constitutional and statutory provisions, constituted the contract between the appellant stockholder and the State of Iowa.

Cook on Corporations, Eighth Edition, Volume 2, Section 492.

That authority lays down the following rule:

> "The charter of a corporation having a capital stock is a contract between three parties and forms the basis of three distinct contracts. The charter is a contract between the state and the corporation; second, it is a contract between the corporation and the stockholders; *third, it is a contract between the stockholders and the state.*" (Italics are ours.)

The above quotation was quoted with approval in the case

of *Avondale Land Company and Others vs. Shook and Others,* 170 Ala. 379 at 384, with the following significant comment:

> "The charter is under the protection of said clause (section 10, article 1, Constitution of the United States) of the federal constitution in all three of its aspects as a contract."

In *Dozier vs. Thornton,* 19 Ga. 325 at 327, the court speaking through Mr. Justice McDonald, said:

> "When the charter of the Planters' and Mechanics' Bank was offered to the persons named therein and other persons who might become stockholders, the eleventh section was a part of it, *and each individual, no doubt, considered it for himself as by his acceptance of it, it would become his contract and he would be bound by all its provisions. The charter must be construed then, as the contract of the defendant in error, and the eleventh section of the charter is a part of it.* If he is liable, it is his own voluntary undertaking." (Italics are ours.)

In *Winfree vs. Riverside Cotton Mills, et al.,* 113 Va. 717, the Supreme Court of that state said:

> "The charter which is to be so held is not only a contract between the state and the corporation, but is *also a contract between the state and the stockholders,* the corporation and the stockholders, and between the stockholders themselves." (Italics are ours.)

The above holdings were adopted by the Supreme Court of Iowa; and must be kept in mind throughout the consideration of this case.

II

**The State of Iowa, both by constitutional provision and by statute, long prior to the granting of the charter of appellee bank reserved to itself the power to alter, amend or abridge the articles of incorporation of corporations, and all laws passed in regard thereto, and such alteration, when exercised subsequently thereto, being a part of the contract, cannot be an impairment of the obligation of the contract, nor denial of due process of law.**

The appellant complains that the legislature by the enactment of Chapter 181 Laws of the Forty-first General Assembly (Section 9248-a1 Code of Iowa 1927) impaired the obligation of his contract, *in that it imposed upon him an additional liability not in existence at the time he acquired the stock. Granting, for the sake of argument in this division, but not conceding that contention, the act challenged did not so impair the obligation of his contract for the reason that by section 1090, Code of 1873, hereinafter set out, the legislature specifically reserved unto itself that right.*

Bearing in mind that the articles of incorporation and the statutes in effect at the time of the reorganization and the renewal of the corporate existence of the appellee bank and of the acceptance of stock in 1911 in the same by the appellant stockholder, we proceed to a consideration of the construction of that contract.

As a part of that contract, the statutes of the State of Iowa in effect at that time provided that whenever the capital stock of any state or savings bank became impaired by losses or otherwise, the Superintendent of Banking (at that time Auditor of State) *might require "an assessment upon the stockholders"* to repair the impairment; that the board

of directors shall cause such deficiency to be made good by a *"ratable assessment on the stockholders"* for the amount of stock held by them; and that should any stockholder *"neglect or refuse to pay his assessment"* within ninety days that a sufficient amount of the stock held by him should be sold to make good the deficiency. Notice, which must include *"the amount due from the stockholder,"* and procedure of sale were outlined in the statute.

The exact provisions (Code of Iowa, 1924, sections 9246, 9247, 9248) were as follows:

"9246. Impairment of capital stock—assessments. Should the capital stock of any state or savings bank become impaired by losses or otherwise, *the superintendent of banking may require an assessment upon the stockholders,* and shall address an order to the several members of the board of directors of such bank, fixing the amount of assessment required.

"9247. Compliance with order. *The board of directors, shall,* within thirty days after the receipt of such order, *cause such deficiency to be made good by a ratable assessment upon the stockholders* for the amount of stock held by them, by giving such stockholders notice in writing, signed by the president or vice president, attested by the cashier or secretary of the bank, under its seal, if it have one, and deposited in the post office, addressed to the last known residence of the stockholders, proof thereof to be made by the affidavit of the person so making the deposit, which notice shall state the entire sum to be raised, and the amount due from the addressed stockholder.

"9248. Assessment enforced. *Should any stockholder neglect or refuse to pay his assessment* within ninety days from the date of mailing notice thereof, the board of directors shall cause a sufficient amount of the capital stock held by such stockholder to be sold at public auction to make good the deficiency, after giving thirty days' notice thereof or by posting the same in the

bank, and publishing it in some newspaper of the county in which the bank is located, which notice shall recite the assessment made, *the amount due thereunder from the stockholder,* and the time and place of sale; proof of all which may be made in the manner provided in the preceding section." (Italics are ours.)

The rule that the charter of a corporation is a contract was early announced in *Trustees of Dartmouth College vs. Woodward, 4 Wheaton,* 518, 4 l. ed. 629. In the cited case, it was held that the charter of a corporation was a contract and within the protection of Section 10, Article 1 of the Constitution of the United States which provides that "no state shall pass any law impairing the obligation of a contract."

In the cited case, however, in the concurring opinion of Mr. Justice Story, it was said:

> "If the legislature mean to claim such an authority, it must be reserved in the grant."

The legislature of the State of Iowa made such a reservation and such reservation was in effect long before the original incorporation of the appellee bank and the purchase of stock by the appellant stockholder and before the reincorporation and renewal of the charter in 1911.

The legislative reservation, or so-called legislative control section, of the statutes in Iowa in effect on the later date and from 1873 are found in Section 1619 of the Code of Iowa, 1897, and provide as follows:

> "*The articles of incorporation,* by-laws, rules and regulations of *corporations hereafter organized under the provisions of this title, or whose organization may be adopted or amended hereunder,* shall at all times be

subject to legislative control, and *may be at any time altered, abridged or set aside by law,* and every franchise obtained, used or enjoyed by such corporation may be regulated, withheld, or be subject to conditions imposed upon the enjoyment thereof, *whenever the general assembly shall deem necessary for the public good.*"

From this it will be observed that the legislature of the State of Iowa reserved the power to alter, amend, or abridge the articles of incorporation of the appellee bank whenever the General Assembly deemed it necessary for the public good and *since this section was in effect when the appellant stockholder purchased his stock, it is a part of his contract with the State of Iowa, and the consideration for the change of his contract with the State of Iowa, is the determination of the legislature that a change or amendment was necessary for the public good.*

Appellant apparently concedes that the legislature might have such power if the increased liability were for the benefit of a creditor but contends that the change in this case was for the benefit of the corporation itself.

In this we contend appellant's error lies. The statutes of the State of Iowa and the opinions of the Supreme Court thereof, make it the duty of the Superintendent of Banking to maintain the solvency of banks, not for the benefit of the institutions themselves, but for the public good. The Superintendent of Banking does not represent the banks in this capacity, but represents the public depositors in the bank and it is for the protection of those public depositors that this statute was enacted. Appellant also contends that the legislative control section applies only to that portion of the contract which relates to the dealings of the corporation with the state. It is our contention that the legislative control section applies as much to the contract between the

stockholder and the state as it applies between the corporation and the state and in support of that contention we cite *Winfree vs. Riverside Cotton Mills*, 113 Va. 717 at 722, where the court of that state said:

"* * * The charter which is to be so held is not only a contract between the State and the corporation, *but is also a contract between the State and the stockholders*, the corporation and the stockholders, and between the stockholders themselves. *The provision that the charter shall be held after such amendment* under the provisions and subject to all the requirements, terms, and conditions of the Constitution, and of any laws passed in pursuance thereof, so far as applicable, *is not limited to the relations between the State and the corporation, but applies as well to the relations between the State and the stockholders*, * * *

"That this is the construction which should be placed upon the language used is shown by the construction which has generally, if not universally, been placed upon the language reserving the power to the State to amend, alter, or repeal a charter. *Although the power reserved is to alter, amend, or repeal the charter, it is not limited to changes or alterations solely between the State and the corporation, but authorizes amendments and alterations, within certain limitations, directly affecting the stockholders in their relations to the State*, to the corporation, and to each other.

"In *Looker vs. Maynard*, supra, the power to alter or amend, etc., reserved to the State, it was held, authorized the legislature to give the right of cumulative voting to each stockholder.

"Under a like power it was held in *Anderson vs. Commonwealth*, 18 Gratt. (59 Va.) 295, that, although the charter of an express company did not make the stockholders personally liable for debts of the company, the legislature had the power to so modify the charter as to make them personally liable. See, also, *Lord vs. Equitable Life Assurance Society*, 194 N. Y. 312, 87 N. E.

443, 22 L. R. A. (N.S.) 420; *Gregg vs. Granby &c. Co.*, 164 Mo. 616, 65 S. W. 312."

The question involved in the cited case was the power of the legislature to authorize corporations to consolidate or merge into a general corporation with any other corporation organized for carrying out the same or a similar business by a majority vote of the stockholders. The complainant was a minority stockholder who claimed that the act there in question was affecting his rights as a minority stockholder and forcing him into a new contract without his consent.

In the case of *Anderson vs. Commonwealth*, 18 Grattan (59 Va.) 295, the court had under consideration a statute which made the stockholders of a corporation personally liable for the debts of the company although the charter provided otherwise. In the cited case, at page 299, the court said:

> "It was further contended that the imposition of such a personal liability on the stockholders, when the legal effect of the charter was to exempt them from any personal liability for debts of the company, was a violation of the contract between the stockholders and the State.
>
> "By the last clause of the charter, it was made subject to modification or repeal, at the pleasure of the General Assembly. Sess. Acts, 1865-6, p. 381. The stockholders, by accepting the charter, assented to that reservation as a constituent part of their contract. *Crease v. Babcock*, 23 Pick. R. 334; *Durfee v. Old Colony and Fall River R. R. Co.*, 5 Allen's R. 230. *And it has been expressly held, that the Legislature may, by virtue of such a reservation, provide by a subsequent statute, that stockholders shall be personally liable for all debts of the corporation incurred after its passage. Stanley v. Stanley*, 26 Maine R. 191; *Sherman v. Smith*, 1 Black's U. S. R., 587. *Stockholders who become such, or con-*

*tinue to be such, after such a liability has been imposed, must be understood as agreeing to incur it.* In this case, the act imposing the personal liability was passed on the 15th day of February, 1866, and the first payment of taxes for which the plaintiff in error was held liable, became due on the 15th day of March, 1866. In the case in 26 Maine, the objection was taken, as it was in this case, that the reserved power of amendment must be exercised by a special act for that purpose, and that the liability of the stockholders could not be altered by a general law; but it did not prevail. *In the case in 1 Black, the personal liability was imposed by the constitution of the State, and by a general law applicable to all banks.*"

In *Gregg vs. Granby Mining and Smelting Company,* 164 Mo. 616, the court had under consideration a statute which changed the voting power of the stockholders and permitted cumulative voting.

In discussing the legislative control section which provided that the charter of every corporation granted after the passage of the act should be subject to alteration, suspension, or repeal in the discretion of the legislature, the court, at page 627, said:

"Since the suggestion of Mr. Justice Story, in *Dartmouth College v. Woodward,* 4 Wheaton (U. S.) 518, that if the power to control, alter or amend the charter was reserved in the charter itself, no doubt could exist as to the power of the Legislature to amend or alter the charter, the various Legislatures of this Union have availed themselves of that suggestion and reserved such power either in general laws applicable to all charters as the General Assembly of Missouri has in section 7 of chapter 34, Revised Statutes 1845 and 1855, or incorporated it in subsequently granted special charters. (*Pacific Railroad v. Renshaw,* 18 Mo. 210.)

"The Supreme Court of the United States, as recently as October 18, 1900, in *Looker v. Maynard,* Atty.

Genl., 21 Sup. Ct. Rep. 21, have reaffirmed the right in a case on 'all fours' with this. In that case a statute permitting each stockholder of a corporation to cumulate his votes upon any one or more candidates for directors (Michigan Statutes 1885, ch. 112; Pub. Acts, 1885, p. 116) was held to be within the power reserved by the State Constitution to its Legislature to alter, amend or repeal future acts of incorporation, and therefore does not impair the obligation of the contract made between the State and the corporation by its original organization. The court remarking at the close of the opinion, 'remembering that the Dartmouth College case (which was the cause of the general introduction into the legislation of the several states of a provision reserving the power to alter, amend, or repeal acts of incorporation) concerned the right of a Legislature to make a change in the number and mode of appointment of the trustees or managers of a corporation, we cannot assent to the theory that an express reservation of the general power does not secure to the Legislature the right to exercise it in this respect.' (*Watson Seminary v. County Ct.*, 149 Mo. 67; *Penn College Cases*, 13 Wall. (U. S.) 213; *Miller v. State*, 15 Wall. 478; *Greenwood v. Freight Co.*, 105 U. S. 13; *Cross v. Railroad*, 12 S. E. Rep. 1071; *State v. Person*, 32 N. J. L. 134; *Meadow Dam Co. v. Gray*, 30 Maine 547.)

"It results that the State having reserved the right to alter, amend or repeal the charter or law under which the Granby company was organized, the Constitution of 1875, and statutes in pursuance thereof, allowing the cumulative vote for directors, are not in violation of the Constitution of the United States, and did not impair the contract of the State with said company, because in accepting the charter it gave its assent to such amendment."

In *Gardner vs. Hope Insurance Company*, 9 R. I. 194, the court had under consideration a statute which made stock which was nonassessable under the articles of incorporation and nonassessable under the laws in effect at the time the

charter was granted subject to assessment for the payment of debts of the corporation, In the cited case, at page 199, the court said:

> "The legislature have reserved the power, at any time to alter or repeal the charter, or any of its provisions. The corporators accepted it upon this condition, and agreed that its provisions might be changed, and every purchaser of stock in this company has assented to these terms, and has agreed to hold his shares subject to this liability to change. *There is no limit to the power expressed in the act. In terms it is unlimited.*
>
> "There is no difference between the parties here or their counsel as to the general rule, that the obligation of a contract in favor of or against the corporation or corporators cannot be impaired, nor can a right under the provisions of the charter be discharged or defeated.
>
> *"But it is claimed by the plaintiff, that by the original charter he has a right vested in him to be free from assessment, and he rests this claim upon the provision in the charter, that stockholders shall not be liable to any responsibility beyond the amount of their respective shares. He claims that it was a contract entered into with the corporators, that this liability should not be extended. There is no case among all those cited by the plaintiff which holds such doctrine, and he has not been able to find one which supports it."*

In *Somerville et al. vs. St. Louis M. and M. Company*, 46 Mont. 268, the court had under consideration a statute authorizing the corporation to make its stock assessable by amendment to its charter by two-thirds vote of the stockholders. The appellant, a minority stockholder, challenged this statute on the grounds that it was an impairment of his contract and in violation of Article 1, Section 10 of the Constitution of the United States.

In the cited case, the appellant contended, as appellant

contends here, that the reserve power of the legislature was so reserved in order to avoid the effect of the Dartmouth College case, supra, and that it was limited to an amendment or alteration of the contract in so far as it concerns the relation between the state and the corporation.

The court overruled this contention and held that the reserved clause, which gave the legislature the power to alter or amend the contract, applied to the contract between the stockholder and the state as much as to any other contract contained in the charter. The supreme court of that state, in discussing this question, 46 Montana, at page 275, said:

> "Our conclusion in that case (*Allen vs. Ajax Mining Company*, 30 Mont. 490, 77 Pac. 47) was that the reserved power may be exercised, not only to alter the contract as it exists between the state and the corporate entity, but as well to alter the contract existing between the corporation and its stockholders, and the stockholders inter sese, to the extent that the authority to dispose of all the corporate property. * * * With all due respect to the authorities holding differently, we see no reason for changing our position, and the decision in that case is conclusive against the appellants here, unless a distinction is to be drawn between the facts in that case and this one; for upon a parity of reasoning, if the legislature may confer upon a corporation the authority to dispose of all of its property—a right denied to the corporation at the time it was organized—*it may likewise provide for a change in the limited liability of the stockholders, by authorizing non-assessable stock to be made assessable upon such reasonable terms as the legislature may prescribe.*" (Italics are ours.)

In *Meadow Dam Company v. Gray*, 30 Me. 547, at page 551, the court, in discussing a statute which increased the liability of stockholders said:

"Several objections to a recovery have been made. They are in substance:

* * *

"6. That the additional act, approved on August 10, 1848, increased the liability of the stockholders, and thereby relieved the defendant from the performance of this contract.

"The act of incorporation was accepted, and the subscription was made, with a provision in the act, that it should be subject to all the duties and liabilities imposed upon corporations by the seventy-sixth chapter of the Revised Statutes. *The twenty-third section of that chapter provides, that all acts of incorporation thereafter granted, shall at all times be liable to be amended, altered or repealed at the pleasure of the Legislature. The defendant cannot therefore correctly allege, that his liability has been increased without his consent. He consented to such action of the Legislature by becoming a member of the corporation.*

*"It is well settled, that an action can be maintained on an express promise to pay for a share or to pay an assessment upon it, although the share may be liable to be sold, to obtain such payment. Turnpike Corporation v. Adams,* 8 Mass. 138; *Turnpike Co. v. Thorp,* 13 Conn. 173; *Glover v. Tuck,* 24 Wend. 153; *Herkimer Co. v. Small,* 21 ib. 273; 2 Hill, 127; *Selma and Tennessee Railroad v. Tipton,* 5 Ala. 787." (Italics are ours.)

In the case of *In re Lee's Bank,* 21 N. Y. 9, the Court had under consideration a statute which made bank stock assessable. Although it was not assessable at the time the corporation was chartered, the court held that such statute did not violate the obligation of the stockholders' contract. The conclusion of the court is found on page 22 of volume 21, New York Reports. This case was appealed to this court and is found reported as *Sherman vs. Smith,* 1 Black 587, 66 U. S. 587, 17 L. Ed. 163. This court affirmed the

opinion of the New York Court of Appeals and in 1 Black at page 593, said:

> "* * * *Now, the 32d section, which reserved to the Legislature the power to alter or repeal the act, by necessary construction, reserved the power to alter or repeal all or any one of these terms and conditions, or rules of liability, prescribed in the act. The articles of association are dependent upon, and become a part of, the law under which the bank was organized, and subject to alteration or repeal, the same as any other part of the general system.*" (Italics are ours.)

This case was followed and cited *McGowen vs. McDonald*, 111 California, 57, where the court at page 66, said:

> "*Under the authority thus conferred both the legislature and the people had power to change the law in regard to the liability of stockholders, without violating any provision of the constitution of the United States.*

> "In *In the Matter of Empire City Bank*, 18 N. Y. 199, a similar question arose. That was a proceeding to enforce a personal liability of stockholders for the debts of the bank under an act passed after the bank was incorporated. The court, by Denio, J., said: 'The statute under which the proceedings were had was challenged as being a violation of the constitution of the United States and of this state. By the federal constitution no state can rightfully enact a law impairing the obligation of contracts. It is argued that, by the general banking law, the associations which it authorizes are alone responsible for its contracts, the shareholders being wholly exempt from liability, and it is insisted that this in the nature of a contract between the state and the shareholders, and that the constitutional guaranty of the integrity of contracts, in the national constitution, would be illusory if the state could, by changing its constitution, subvert all existing engagements; and hence that the guaranty applies as well to state constitutions as to other state laws. Without denying or affirming the soundness of these positions,

*it is enough to say that the general banking law expressly reserves to the legislature the power to alter or repeal it, so that any changes, which it or the people think proper to make, are fully authorized by the provisions of the supposed contract itself.'* See, also, the following cases, which are to the same effect: *In the Matter of Lee, etc. Bank,* 21 N. Y. 9; *In the Matter of Reciprocity Bank,* 22 N. Y. 9; *Sleeper v. Goodwin,* 67 Wis. 577; *Tomlinson v. Jessup,* 15 Wall. 454; *Meadow Dam Co. v. Gray,* 30 Me. 551." (Italics are ours.)

This case was also cited with approval by this court in *Looker vs. Maynard,* 179 U. S. 46 at page 52 and page 53, where this court speaking through Mr. Justice Gray, said:

"The case of *Sherman v. Smith,* 1 Black. 587, was as follows: The general banking act of New York of 1838, c. 260, provided, in Sec. 15, that any number of persons might associate to establish a bank, upon the terms and conditions, and subject to the liabilities prescribed in this act; in Sec. 23, that no shareholder of any association formed under this act should be individually liable for its debts, unless the articles of association signed by him should declare that the shareholder should be liable; and, *in Sec. 32, that the legislature might at any time alter or repeal this act. The articles of association of a corporation organized under this act in 1844 expressly provided that the shareholders should not be individually liable for its debts.* By provisions of the constitution of New York of 1846, art. 8, sec. 2, and of the general statute of 1849, c. 226, *the shareholders of all banks were made liable for debts contracted by the bank after January 1, 1850. This court unanimously held that these provisions were not unconstitutional as impairing the obligation of a contract.*" (The italics are ours.)

This case was also followed in *In Re Reciprocity Bank,* 22 N. Y. 9, and in *Hinckley vs. Schwartzchild,* 107 N. Y. 470.

In *Greenwood vs. Freight Company,* 105 U. S. 13, at page

20, this court, discussing Mr. Justice Story's suggestion in the Dartmouth College case, said:

> "* * * It was, no doubt, with a view to suggest a method by which the State legislatures could retain in a large measure this important power, without violating the provision of the Federal Constitution, that Mr. Justice Story, in his concurring opinion in the Dartmouth College case, suggested that when the legislature was enacting a charter for a corporation, *a provision in the statute reserving to the legislature the right to amend or repeal it must be held to be a part of the contract itself, and the subsequent exercise of the right would be in accordance with the contract, and could not, therefore, impair its obligation.* And he cites with approval the observations we have already quoted from the case of *Wales v. Stetson,* 2 Mass. 143." (The italics are ours.)

The Greenwood case was cited with approval by this court in *Looker vs. Maynard,* 179 U. S. at page 52.

The Greenwood case, supra, was also cited with approval and quoted by this court in *Citizens Savings Bank vs. Owensboro,* 173 U. S. 636, where this court, speaking through Mr. Justice White, at page 651, said:

> "The source of the reservation, by many of the States in general laws, of the power to amend, alter or repeal was fully reviewed in *Greenwood v. Freight Company,* 105 U. S. 13, where it was shown that such legislation had its origin in the purpose to provide for a case exactly like the one before us. Referring to the decision in *Dartmouth College v. Woodward,* 4 Wheat. 518, the court, through Mr. Justice Miller, said (p. 20): 'It was, no doubt, with a view to suggest a method by which the state legislatures could retain in a large measure this important power,' (the power to repeal or amend,) 'without violating the Federal Constitution, that Mr. Justice Story, in his concurring opinion in the Dart-

mouth College case, suggested that when the legislature was enacting a charter for a corporation, *a provision in the statute reserving to the legislature the right to amend or repeal it must be held to be a part of the contract itself, and the subsequent exercise of the right would be in accordance with the contract, and could not, therefore, impair its obligation.* And he cites with approval the observations we have already quoted from the case of *Wales v. Stetson*, 2 Mass. 143. It would seem that the States were not slow to avail themselves of this suggestion. . . .' As then the limitation in the charter of the bank was subject to repeal by the legislature, it cannot be claimed that such exemption was vested in the bank, and was therefore subject to be reinstated if the Hewitt Act was not an irrevocable contract, even if the correctness of the claim that this result would legally arise, if the charter had been an irrevocable contract, be arguendo conceded." (Italics are ours.)

Appellant contends that the reserve power applies only as between the state and the corporation and cites cases to support his contention.

We shall not review at length those cases, but merely point out that in most of them the contract was a private contract as in the case of *St. John vs. Building and Loan Association*, 136 Iowa, 448; or the corporation was not a corporation which had a public duty to perform and in which the public had an interest as opposed to the interests of the stockholders; or such cases as *Gary vs. St. Joe Mining Company*, 34 Utah, 497, or *Yoncalla State Bank vs. Gemmill*, 134 Minn. 334, where the reserved power of the legislature was in no way comparable to the reserve power contained in Section 1090 Code 1873, codified as Section 1619 of the Code of 1897, which were in full force and effect both at the time the appellant bank was orignally incorporated

and at the time it was reincorporated and its charter renewed in 1911.

Appellant also attempts to justify his position and to distinguish those cases which held that the stockholders of a corporation may be made liable for an assessment to pay creditors as contra-distinguished from an assessment to repair impaired capital stock. It is his contention that the assessment to repair impaired capital stock is for the benefit of the corporation only and that the statute challenged herein, Chapter 181 Laws of the Forty-first General Assembly, codified as Section 9248-a1 of the Code of 1927, was enacted for the benefit of the bank.

We respectfully submit that such is not the case, and that the assessment for the purpose of repairing impaired capital stock is in the interest of the public, was passed to protect the public depositors in the bank by maintaining the solvency thereof, and maintaining their deposits in toto and undiminished, and was well within the reserved power reserved to the legislature of the State of Iowa, which took the suggestion of Mr. Justice Story in the Dartmouth College case, and followed it by providing that the legislature should have the power to alter or abridge the articles of incorporation of any corporation organized after its passage whenever the legislature deemed it for the public good.

We believe the language of this court expressed by Mr. Justice Miller in *Greenwood vs. Freight Company, supra,* reiterated by Mr. Justice White in *Citizens Savings Bank vs. Owensboro, supra,* and again expressed by Mr. Justice Gray in *Looker vs. Maynard, supra,* that the power to alter or amend the articles of incorporation of a corporation became as much a part of the stockholder's contract as any

other provisions of the articles of incorporation of the laws, and that being a part of the contract, the exercise of the power to amend, alter or abridge the articles of incorporation cannot be a violation of the obligation of the contract in violation of Section 1, Article 10 of the Constitution of the United States and that if it is not in violation of that section, that it cannot deprive the appellant stockholder of his property without due process of law because he agreed in his contract that the legislature of the State of Iowa, being one of the contracting parties, could so change the obligation thereof.

That a bank is a corporation of such a public nature as to warrant the exercise of such power is discussed in the next division of the argument.

## III

**The business of banking is a business of such public nature and public interest that it may be brought under complete legislative control and regulation by such timely action as in the judgment and discretion of the legislature is necessary for the public good, and the protection of the public, which deals with the bank, and such action is not an impairment of the obligation of the stockholder's contract with the state, nor denying him of his property without due process of law.**

A banking corporation is a corporation doing a business which is not private, only, but is of great importance and interest to the public. This is especially true in the State of Iowa for the reason that, regardless of how much the capital stock may be, there is no limitation upon the amount of deposits which a bank may take, either of private individ-

uals or of public corporations, such as, Counties, School Districts, Cities and Towns and Townships. It is of highest importance to the public that a bank may be maintained in a solvent condition and that any impairment in its capital stock be made good by the stockholders, in order to maintain that solvency which makes it a safe institution for the money of the depositors and with which the public in general can deal. The legislative control power of the Iowa Statutes, herein before referred to, specifically provides that the Articles of Incorporation may be altered or abridged by the legislature whenever the legislature deem it necessary for the public good. The reserve power to thus amend, alter or abridge, is not limited to questions arising out of the privilege of the franchise, but extends especially to those cases where, for the protection of the public and for the public good, the legislature may act.

This question has been before many courts in various jurisdictions of these United States and has been the subject of discussion of this honorable court.

In the case of *Bryan et al. v. Bullock,* 84 Florida, 179 at 191, the Supreme Court of Florida, with reference to the nature of the business said:

> "At common law the business of banking was open to all and could be followed by the citizen at pleasure, unless forbidden by legislative enactment, *but the business is not juris privati only, it is subject to public regulation because affected with a public interest.*" (Italics are ours.)

In *Davis v. Moore,* 130, Arkansas 128 at page 138, the Supreme Court of that State, discussing similar statute imposing liability on the stockholders of the bank said:

"It cannot be assumed that the new terms prescribed by the statute operate as an impairment or depreciation of the value of the stock, and that an objecting stockholder would be unable to dispose of his shares of stock at full value. *The statute is reasonable and just alike to the public and to stockholders in banking corporations, and for that reason, if for no other, it can not be assumed that the imposition of new methods of business and new terms upon which a corporation may operate business would depreciate the market value of stock in such corporation.*

"It is evident, we think, that the Legislature intended to give a retroactive effect to this statute so as to make it apply to all banking corporations which continue in business. We do not ignore the well-known presumption against giving, by implication, a retrospective effect to statutes. The rule is, we know, that every statute is presumed to have been intended to act prospectively unless otherwise expressed, but when this statute is considered as a whole, *it is obvious that the Legislature intended to impose liability for all the indebtedness of a bank whether it accrued prior to the time the act went into force or thereafter. It is difficult to separate the obligations of a going business concern like a bank.* Of course, after it becomes insolvent it would be possible for the Bank Commissioner to ascertain and separate the obligations of the bank which accrued subsequent to a certain date and impose the statutory liability against stockholders only as to such indebtedness. But that would not be the convenient or orderly method of winding up the affairs of such a corporation and applying its assets ratably among the creditors. The statutory scheme would not, we think, be complete and efficacious unless construed to impose liability on the stockholders for its debts irrespective of the time when contracted, and this affords a strong reason for construing the statute as operating retroactively. At any rate, the statute declares that stockholders of 'every bank doing business in this State'—that is to say, all who did business in the State after the statute went into effect—'shall be liable for all contracts, debts and engagements of such bank' to the extent of their stock,

etc., and the clear inference from this language is that from and after the period stated the stockholders should be liable for all debts of the bank whether contracted before or after that time.

*"Our conclusion, therefore, is that the statute applies retroactively, and that as such it is not in conflict with the Constitution of this State or of the United States."* (Italics are ours.)

The last cited case was quoted with approval in the case of *Bank v. State*, 148, Arkansas, 504, where the court at page 510 said:

*"An acceptance of the altered charter was clearly made by continuation in business after the change was made. The statute in question is not void as infringing upon either the Constitution of the State or of the United States."* (Italics are ours.)

In the case of *Allen vs. Scott*, 104 Ohio State 436, at 440, the court, speaking through Mr. Chief Justice Marshall, discussing a similar legislative control section, cited the opinions of this court in *Greenwood vs. Union Freight Company*, supra, and quoted from *Looker vs. Maynard*, 179 U. S. 46 at page 53, saying:

"The case of *Sherman v. Smith*, 1 Black, 587, was as follows: The general banking act of New York of 1838, c. 260 provided, in Sec. 15, that any number of persons might associate to establish a bank, upon the terms and conditions, and subject to the liabilities prescribed in this act; in Sec. 23, that no shareholder of any association formed under this act should be individually liable for its debts, unless the articles of association signed by him should declare that the shareholder should be liable; and, in Sec. 32, that the legislature might at any time alter or repeal this act. The articles of association of a corporation organized under this act in 1844 expressly provided that the shareholders should not be

individually liable for its debts. By provisions of the constitution of New York of 1846, art. 8, sec. 2, and of the general statute of 1849, c. 226, and the shareholders of all banks were made liable for debts contracted by the bank after January 1, 1850. *This court unanimously held that these provisions were not unconstitutional as impairing the obligation of a contract.*" (The italics are ours.)

In the case of *Northwestern Trust Company vs. Bradbury*, 117 Minn., 83, 134 N. W. 513, the court said (quoting from 134 N. W. at page 515):

> "*The business of banking so materially and vitally affects the general public interests as to make it a proper subject for complete legislative regulation and control. The sole purpose of this statute was to vest in the public examiner supervisory control over such institutions and by timely action to prevent the impairment of their funds, to the injury and loss of depositors and others, and to keep and maintain them so far as practicable upon a safe and sound financial basis.* That the power to so provide is within legislative discretion we have no doubt. *Noble State Bank v. Haskell*, 219 U. S. 104, 31 Sup. Ct. 186, 55 L. Ed. 112, 32 L. R. A. (N. S.) 1062." (Italics are ours.)

This authority was cited with approval in the case of *Duke vs. Force*, 120 Washington 599 at 611.

In the thus cited opinion, this court speaking through Mr. Justice Holmes, 219 U. S. at page 113 said:

> "* * * We cannot say that the public interests to which we have adverted, and others, are not sufficient to warrant the State in taking the whole business of banking under its control. On the contrary we are of the opinion that it may go on from regulation to prohibition except upon such conditions as it may prescribe. In short, when the Oklahoma legislature de-

clares by implication that free banking is a public danger, and that incorporation, inspection and the above-described co-operation are necessary safeguards, this court certainly cannot say that it is wrong. (Citing cases.)"

In the cited case and in all of the so-called bank guaranty cases determined by this Honorable Court, it has been uniformly held that such laws requiring an assessment upon banks for the purpose of guaranteeing the solvency of all banks under the control of the state are of such public interest that they do not violate either the obligation of contract or the due process clause of the Fourteenth Amendment of the Constitution of the United States.

In the last cited case, this court also said:

"* * * If then the legislature of the state thinks that the public welfare requires the measure under consideration, analogy and principle are in favor of the power to enact it. *Even the primary object of the required assessment is not a private benefit as it was in the cases above cited of a ditch for irrigation or a railway to a mine, but it is to make the currency of checks secure, and by the same stroke to make safe the almost compulsory resort of depositors to banks as the only available means for keeping money on hand.*" (The italics are ours.)

In the last cited case, it must be borne in mind that it was decided under the police power of the state. The case at bar is far stronger because of the fact that the statutes were passed providing for the assessment to repair impaired capital stock and keep and maintain the solvent condition of the bank and are under an expressed reserved power to alter or amend the articles of incorporation whenever the legislature deem it necessary for the public good.

The State of Iowa, speaking through the legislature, being one of the parties to the contract and having reserved unto itself the power and authority to alter or abridge the contract, has said to the stockholder, the other contracting party, that, in the public interest, the stockholder must, to the extent of the amount of stock held by him, assist in maintaining the solvency of the bank.

How can the stockholder complain that the obligation of his contract is impaired when he agreed in advance that this could be done when the legislature deemed it necessary for the public good?

We repeat the language of Mr. Justice White in *Citizens Savings Bank vs. Owensboro*, 173 U. S. 636, where this court at page 562, said:

> "A provision in the statute reserving to the legislature the right to amend or repeal it must be held to be a part of the contract itself, and the *subsequent exercise of the right would be in accordance with the contract, and could not, therefore, impair its obligation.*" (Italics are ours.)

Any other construction would render the reserved power of the legislature useless, void, and impotent, and would make the suggestion of Mr. Justice Story in the Dartmouth College case, and the subsequent action of the legislatures of the various states, and the numerous opinions of the courts rendered thereon entirely nugatory. Any other construction would make the reservation entirely valueless and would result in an impossibility of its operation.

This court, speaking through Mr. Justice White in *Citizens Savings Bank vs. Owensboro*, 173 U. S. 636, at 651, with reference to this proposition said:

"• • • Indeed, reduced to its final analysis, the argument that because in a grant or charter at a time is designated for its duration, it cannot, therefore, until the expiration of such time, be repealed, altered or amended, is equivalent to saying that the reserved power cannot be exercised in any case of contract. *For, if every case of charter or grant where a time is fixed, either expressly or by necessary construction in the charter or grant, is taken out of the reach of the reserved power, it would follow that only those charters or grants which were determinable at will would come under the control of the power reserved. But to say this simply amounts to declaring that the reserved power applies and can be enforced only in those cases where it would be entirely unnecessary or useless to do so.*"

We respectfully submit that the courts should not place such a construction upon the statutes of a state that their enactment will be rendered entirely and absolutely nugatory.

IV and V

**Even though the reserved power, hereinbefore discussed, does not apply, the opinion of the Supreme Court of Iowa in the case at bar was correct for the reason that no additional liability was imposed upon the appellant; such liability already existing under statutes in effect at the time of the reincorporation in 1911; AND CHAPTER 181, LAWS 41ST GENERAL ASSEMBLY, PROVIDED MERELY FOR AN ADDITIONAL REMEDY FOR COLLECTING THAT EXISTING ASSESSMENT LIABILITY.**

The Supreme Court of the State of Iowa held that the statutes at the time the appellant became a stockholder in the bank, under its reincorporation and renewed charter in 1911, imposed upon the stockholder a liability to pay the assessment for which the judgment is sought in this case. Those statutes effective on May 6, 1894, enacted

by Chapter 29, Laws of the Twenty-fifth General Assembly and codified as sections 1878, and 1879, Code of Iowa 1897, and as Sections 9246, 9247 and 9248 of the Code of Iowa, 1924, provided as follows:

"9246. Impairment of capital stock—assessments. Should the capital stock of any state or savings bank become impaired by losses or otherwise, *the superintendent of banking may require an assessment upon the stockholders*, and shall address an order to the several members of the board of directors of such bank, fixing the amount of assessment required.

"9247. Compliance with order. *The board of directors shall*, within thirty days after the receipt of such order, *cause such deficiency to be made good by a ratable assessment upon the stockholders* for the amount of stock held by them, by giving such stockholders notice in writing, signed by the president or vice president, attested by the cashier or secretary of the bank, under its seal, if it have one, and deposited in the post office, addressed to the last known residence of the stockholders, proof thereof to be made by the affidavit of the person so making the deposit, which notice shall state the entire sum to be raised, and the amount due from the addressed stockholder.

"9248. Assessment enforced. *Should any stockholder neglect or refuse to pay his assessment* within ninety days from the date of mailing notice thereof, the board of directors shall cause a sufficient amount of the capital stock held by such stockholder to be sold at public auction to make good the deficiency, after giving thirty days' notice thereof by posting the same in the bank, and publishing it in some newspaper of the county in which the bank is located, which notice shall recite the assessment made, *the amount due thereunder from the stockholder*, and the time and place of sale; proof of all which may be made in the manner provided in the preceding section." (Italics are ours.)

It should be noted that the assessment is "*upon the stock-*

*holders"* made under the order of the superintendent of banking, and under the order of the board of directors. It should also be noted that the statute provides that if *"the stockholder neglects or refuses to pay his assessment"* that the remedy by the sale of his stock is prescribed. The notice of sale must *"recite the assessment* (and) *the amount due thereunder from the stockholder."*

The enactment which is challenged in this suit, and which it is claimed by the appellant is in violation of the obligations of his contract, and in violation of due process of law, merely provides for another remedy of collecting the assessment, which was imposed under the statutes in effect at the time of the reincorporation and renewal of the charter in 1911, and which was a part of the stockholder's contract with the state. No additional liability is imposed upon him by the said enactment.

The challenged enactment is only Chapter 181 Laws of the Forty-first General Assembly of Iowa, and codified as Section 9248-a1 Code of Iowa 1927 and provides as follows:

> "Liability for deficiency. Should the proceeds of a sale under the preceding section of all of the stock of any stockholder *be insufficient to satisfy his entire assessment liability* he shall be personally liable for the deficiency, which may be collected by suit brought in the name of the bank against such stockholder." (Italics are ours."

The remedy by the sale of the stock was not made exclusive by the legislature, and there is not one syllable in the above quoted sections of the original statute to indicate that such remedy was exclusive. The stockholder's contract with the state under the statute as it existed prior to the enactment of the last cited section was that the superintendent of banking

could require an assessment "upon the stockholders;" that the board of directors under the mandate of the superintendent of banking, were required to make the deficiency good by a "ratable assessment upon the stockholders;" that should any stockholder neglect or refuse to pay "his assessment" within a specified time the board of directors should order "a sufficient amount of the capital stock held by such stockholder" sold after giving prescribed notice which must "recite the assessment made" and "the amount due thereunder from the stockholder."

The appellant contends that the supreme court of Iowa, erred in holding that the first above quoted statutes imposed a liability on the stockholder prior to the enactment of Chapter 181 Laws of the Forty-first General Assembly, effective in 1925.

While the construction placed on this statute by the Supreme Court of Iowa is not binding on this court, it is the rule of this court laid down by Mr. Justice Peckham in *Waggoner vs. Flack*, 188 U. S. 595, that this court will follow the construction of a particular statute of a state by the Supreme Court of that state if the construction is not free from doubt. The language of Mr. Justice Peckham in the cited case at page 600 is as follows:

> "We are not therefore, bound by the construction which the state court places upon the statutes of the state, which are involved in such an inquiry (question of impairment of an original contract by subsequent legislature), *yet, as the true construction of the particular statute is not free from doubt, considering the former legislation of the state on the same subject, we feel that we shall best perform our duty in such case by following the decision of the state court on the precise question, although doubts as to its correctness may have*

*been uttered by the same court in some subsequent case."* (Italics are ours.)

Appellant contends that the Supreme Court of Iowa has, in former cases, held that there is no personal liability on the stockholder under the statutes as they existed prior to 1925, and cites *Leach vs. Arthur Savings Bank,* 203 Iowa 1052, 213 N. W. 772, and *Andrew vs. Peoples State Bank of Humboldt,* 234 N. W. 542 at 546.

In our argument before the Supreme Court of Iowa in the case at bar, we stated that we were not unmindful of the holdings in the Arthur Savings Bank case; but pointed out to the court that the question involved in the instant case was not raised in the Arthur Savings Bank case, supra, nor was it raised in the Peoples State Bank case, supra, for the reason that the question involved in those cases was the question of the right of a stockholder to apply an assessment which he had paid prior to the closing of the bank, on his liability to creditors after the bank closed. What the court said, therefore, in the cited cases, was mere dictum and was not followed by the Supreme Court of Iowa when the precise question was raised in the instant case.

The sole question involved under this division of the argument is whether the statutes above cited and in effect prior to the enactment of Chapter 181, Laws of the Forty-first General Assembly of Iowa, created a liability upon the stockholder for the assessment ordered by the Superintendent of Banking and whether the later enactment created an additional liability upon the appellant.

The rule that courts will look to the intent of the legislative branch of government in construing statutes is too well established to require citation of authority to this

court. As well established is the rule that the courts may look to the title of an act as an aid in determining the intent of the legislature in enacting it.

In Lewis' Sutherland on Statutory Construction, Second Edition, Vol. 2, Section 340, that authority says:

> "But the title of an act is now so associated with it in the process of legislation that when, in performing its constitutional functions, it affords means of determining the legislative intent, in cases of doubt its help cannot be rejected for being extrinsic and extra-legislative. The language of an act should be construed in view of its title and its lawful purposes; broad langauge should be confined to lawful objects."

The Supreme Court of Kentucky in speaking of the title of an act, says:

> "It is essentially a part of the act, not only because it has been selected and adopted by the legislature as one of the tests of their meaning as expressed in the bill, but because the constitution has made it a part, and the controlling part, of the law to which it applies. It is therefore, not only useful in affording a fair index of the legislative intent, in case of ambiguity in the context, but it must be read in connection with the remainder of the act, as a part of it, in determining what is the law."

See *Commonwealth vs. Barney*, 24 Ky. L. R. 2352.

In Story's Commentaries on the Constitution, Section 459, it is said:

> "It's true office is to expound powers conferred, not substantially to create them."

It is further said in Lewis' Sutherland on Statutory Construction, Vol. 2, 2d. ed. section 341:

> "It is 'a good means' says Lord Coke, 'to find out the meaning of the statute, and is a true key to open the understanding thereof.'" Citing Co. Litt. Section 79a.

Using such aids to ascertain the legislative intent and purpose of these enactments, let us look to the title of these acts as they were passed by the legislature.

The statutes providing for the assessment on the order of the superintendent of banking, effective May 6, 1894, being Chapter 29 Laws of the Twenty-fifth General Assembly, and codified as hereinbefore stated, bore the following title:

> "An act to provide for the better security of depositors in state and savings banks organized under the laws of Iowa."

To show the urgency of the legislation at that time, (which was during a financial crisis) the act was made effective by publication and became effective on May 6, 1894, having been approved by the Governor on April 24, 1894.

That the legislature intended a liability on the stockholder is shown by the fact that the act then provided for an assessment "upon the stockholders" and provided that should "any stockholder" in any state or savings bank organized under the laws of this state "neglect or refuse to pay his assessment" that it should be the duty of the board of directors "to cause a sufficient amount of the capital stock held by him" to be sold to pay the same.

It is therefore evident that the purpose of this act was, not to benefit the corporation, but to provide for the better security of the depositors in state and savings banks in Iowa, and, that the legislature, in enacting this statute, expected the remedy to be sufficient is shown by the fact that the board of directors was authorized "to cause a sufficient amount of the capital stock" to be sold, and not his entire holdings.

As further evidence of the existing liability, it must be noted that in the original act, Chapter 29, Laws of the Twenty-fifth General Assembly, the notice of sale of stock must apprise the stockholder of *"the assessment made* (and) *the amount due thereunder from the stockholder."*

How could it be "due from the stockholder" if it were not the intent of the legislature to make the stockholder liable for the assessment?

Having thus imposed a liability upon the stockholder, provided for a method of apprising him of the amount due from him thereunder, and for sale of his stock if he neglected or refused to pay his assessment, no further legislation was enacted upon this subject until the Forty-first General Assembly of Iowa, which met in 1925. It is common knowledge that at that time another financial crisis was in existence affecting the solvency of banks. The former general assembly had evidently considered that the sale of a sufficient amount of the capital stock of each stockholder would be sufficient to again place the bank in a solvent condition. Evidently, the Forty-first General Assembly found reason for further legislation upon the subject and proceeded to amend Section 9248 of the Code by the enactment of Chapter 181 of the laws thereof.

Let us consider the title to this act which was as follows:

> "An act to amend Section ninety-two hundred forty-eight of the Code of 1924, *relating to the collection of assessments against stockholders of banks.*" (Italics are ours.)

Thus the construction placed upon this statute by the Supreme Court of Iowa was entirely in accord with the intent of the legislature which was in the first instance in the enactment of Chapter 29, Laws of the Twenty-fifth General Assembly, to provide for better security of depositors in state and savings banks, and in enacting Chapter 181 Laws of the Forty-first General Assembly (herein challenged) to amend the former enactment relating to the collection of assessments against stockholders of banks.

It should also be noted that the said Chapter 181, herein challenged, provides that liability for the deficiency after the sale of the stock is effective only where *"the proceeds of a sale hereunder (section 9248) of all of the stock of any stockholder be insufficient to satisfy his entire assessment liability."*

The very construction placed upon the act by the legislature shows on its face, as well as by the title, that the legislature intended to fix an assessment liability prior to the enactment of said Chapter 181. The legislature recognized that the liability for the deficiency had always existed by its expression "his entire assessment liability," and the provision for recovery by personal judgment is merely an enlargement of the remedy against him. In the first instance the recovery may be had against the stock and the proceeds applied to his liability by notice only. If this is not sufficient to satisfy "his entire assessment liability,"

then judgment and general execution against his other property may be had.

It was, therefore, the intent of the legislature in the enactment of the original statute to make the stockholder liable for the assessment, and in the enactment of the latter statute to provide a more effective remedy for the collection of the liability which already existed.

It is respectfully submitted that the Supreme Court of the State of Iowa, upon all of the authorities cited, did not err in holding that under the statutes of the State of Iowa, existing at the time of the reincorporation and renewal of the charter of the appellee bank, did provide for, prescribe, and impose a liability on the stockholders, in banks including the appellant, for the payment of an assessment to repair impaired capital stock equal to the amount of stock held by them, and that the subsequent change in remedy providing for judgment and general execution against him, was remedial only, and therefore, not an impairment of the obligation of his contract nor a denial of due process of law.

It is contended by appellant that there is a distinction between the cases providing for the enforcement of the liability for the benefit of creditors and in the enforcement of a liability to repair impaired capital stock. We have pointed out the intent of the legislature as evidenced by the title of the original act of the Twenty-fifth General Assembly and of the amendatory act of the Forty-first General Assembly which is evidenced by the titles to the act in question, the former to protect by assessment upon the stockholders, the depositors in banks, a public responsibility; and the latter to provide a more effective remedy or means of collecting the liability.

In *Bernheimer vs. Converse* supra, this court speaking through Mr. Justice Peckham (206 U. S. 532-3) said:

> "Nor can we see any substantial difference in this respect between a liability to be ascertained for the benefit of creditors upon a stock subscription and the liability for the same purpose which is entailed by becoming a member of a corporation through the purchase of stock, whereby a contract is implied in favor of creditors. *The object of the enforcement of both liabilities is for the benefit of creditors, and while it is true that one promise is directly to the corporation and the other does not belong to the corporation, but is for the benefit of its creditors, either liability may be enforced through a receiver acting for the benefit of creditors, under the orders of a court in winding up the corporation in case of its insolvency.*" (Italics are ours.)

In many jurisdictions in these United States, and in the opinions of this court, statutes relating to a change of remedy have been held not in violation of the impairment of obligations of the contract or due process clauses of the Constitution of the United States.

In *Brotherhood of American Yeoman vs. Mantz*, 23 Arizona, 610, the Supreme Court of that state had under consideration a statute relating to defenses based on misrepresentation in suits on life insurance policies.

In discussing this question, the Supreme Court of that state at page 616, said:

> "Section 2 of chapter 46, we think, was purely remedial. It imposed a duty upon an insurer, in case it was sued on one of its policies to pay or tender to the insured any premiums that it had received, before it could defend. It was intended to be regulatory of litigation over policies of life insurance. *We understand the rule to be that parties have no vested right in par-*

*ticular remedies or modes of procedure, and that legislatures may change existing remedies or prescribe new modes of procedure without impairing the obligation of the contracts,* provided an efficacious remedy remains for its enforcement. *National Security Co. v Architectural Decorating Co.*, 226 U. S. 276, 57 L. Ed. 221, 33 Sup. Ct. Rep. 17 (see, also, Rose's U. S. Notes); In re Farmers' Co-operative Co. (D. C.), 202 Fed. 1008; *American Radiator Co. v. American Bonding Co.*, 27 Cal. App. 687, 151 Pac. 168. It was therefore not necessary that the defendant deposit with the court the premiums it had received from the insured before it might defend, and the plaintiff's contention in that respect is not well founded, because chapter 46 was repealed in 1913 when the laws were revised, and since that time it has not been necessary to observe the remedial part thereof in litigation over life insurance policies, even though they may have been written while chapter 46 was a valid and subsisting law." (Italics are ours.)

In *Moore vs. Ripley*, 106 Ga. 556, the Court had under consideration a statute which provided that each stockholder in a bank shall be individually liable up to a limited amount for the ultimate payment of the debts of the corporation. There was no provision in the statute for the enforcement of that liability. A later enactment provided a remedy and the defendant stockholders resisted recovery on the grounds that the latter statute was unconstitutional in that it imposed an additional liability on them but the Court held the act merely remedial.

The Court, speaking through Mr. Justice Little, at page 559, said:

"2. The point is also made by the demurrer, that as the liability set out in the petition is purely statutory, the right of action is directly in the creditors, and the receiver had no right to institute the action. The act

incorporating the State Savings Association, which fixes the liability of its stockholders, does so in the following language: 'Each stockholder shall be individually liable for the ultimate payment of the debts of said corporation to an amount equal to the amount of stock held by him.' Acts 1888, p. 82, sec. 5. The statute is silent as to who shall have the right to enforce this liability, in words. It simply fixes the liability. In a number of the States, the statute on this subject goes further and prescribes in terms that the creditors have the right to enforce it for their benefit. It suffices us, however, to observe that our statute prescribes the liability, which is for the ultimate payment of the debts of the corporation in proportion to the number of shares held; and while we are not prepared to say that a single creditor or a number of creditors of the bank could not, under this, maintain an action against a stockholder who is liable, at the same time we know of no reason why a receiver of the corporation, charged with the duty of collecting whatever assets properly belong to the corporation which are liable for the payment of its debts, might not in equity, under this statute, seek and have a decree against all such stockholders for the benefit of all the creditors, inasmuch as the court has taken possession of the estate of the corporation on the application, and for the benefit, of its creditors, and the receiver is but the active officer of the court to collect the assets and apply their proceeds to the extinguishment of the debts due by the corporation. True, the liability fixed by the act of incorporation is not to the corporation itself, but to its creditors; and while all the property of the corporation, including debts due to it, is a fund which goes into the hands of the receiver for the benefit of the creditors, and if, as is true, the liability of the stockholders can only be applied to the extinguishment of debts, and it exists in favor of the creditors, it would seem to be in consonance with equity practice to gather in all the funds made available by law for payment of the creditors and then complete the whole matter by distribution. But, however this may be, our Civil Code No. 1890, provides that this individual liability is an asset of the corporation and shall be enforced by the receiver or other officer having the legal right to collect

and distribute the assets of the failed corporation. The provisions of this statute seem to settle the question. They are codified from the act of 1894. Acts 1894, p. 76. *It is, however, objected that inasmuch as this act was passed subsequently to the act incorporating the bank, in which latter act the liability of stockholders is fixed, to apply it in this case would give to the act of 1894 a retroactive application. This contention is not sound. The act of 1888 created a liability on the part of stockholders for the ultimate payment of the debts of the corporation to an amount equal to the amount of stock held by each, and to apply the act of 1894 would not be in any way to increase or change the liability fixed by the act of incorporation.* The vested right given to the creditors of the bank by the latter act was to hold the stockholder liable for his debt in the proportion named. *This is not taken away nor affected by the act of 1894, but that act recognizes the same liability and simply declares a remedy or means of enforcement of the right given. While the act declares the liability to be an asset of the bank, it does so in the sense of providing for the enforcement of the right previously given, and for the purpose of distributing the proceeds arising from the liability among the persons entitled to it by the act of incorporation. It must, therefore, be a remedial act, and as such has direct application in this case.* By its provisions no injustice is worked to the creditor, nor are any of the rights of that class lessened. It is provided by our Civil Code, No. 6, that laws looking to the remedy or mode of trial may apply to contracts entered into prior to their passage. Such a construction does not contravene the provisions of our constitution. Civil Code No. 5731, Sedgwick on Construction of Statutes, 160; *Pritchard v. Savannah R. Co.*, 87 Ga. 294." (Italics are ours.)

This case was cited with approval in *LaMar vs. Taylor*, 141 Ga. 227, where the Court at page 235, said:

"It was next contended that, if the act of 1894 applied to the statutory liability of the stockholders in this bank, it was unconstitutional as being retroactive and impair-

ing the obligation of contracts. *In Moore v. Ripley, 106 Ga. 556 (32 S. E. 647), the decision substantially disposes of this contention, holding that the provision of the act of 1894 for the enforcement of the liability by the receiver was remedial in its character, and not unconstitutional as being retroactive. As already mentioned, the extent of the liability of the stockholders was in no way changed by that act, but only the method of collecting and distributing to the proper parties the amount for which the stockholders are liable, in accordance with equitable methods.*" (Italics are ours.)

In *Johnson vs. Libby*, 111 Me. 204, 88A 647, the Supreme Court of that state, held that it was immaterial whether the stockholder were a shareholder before the amendment making shareholders liable for the indebtednsss of the corporation, or not for the reason that by continuing as such stockholder she accept[illegible] the effect of the amendment so far as it applied to her l[illegible]lity; and also that a stockholder in a corporation has no vested right in a particular remedy by which his liability as such may be enforced against him.

Under the weight of this opinion, the applicant stockholder by continuing as a stockholder subsequent to the effective date of the statute herein challenged, accepted the amendment and cannot prevail in this case for that reason, in addition to all of the other reasons urged.

The Supreme Court of Iowa in the case at bar also quoted from the last cited case (236 N. W. at p. 13) as follows:

"Its (the amendment to a statute) only purpose and effect was to provide a different remedy, a different course of procedure, by which the shareholders' liability could be enforced. The Legislature has power to modify or change a remedy, provided no substantial right is thereby impaired. *And a shareholder in a corporation has no vested right in a particular remedy by which*

*his liability as such may be enforced against him.* (The italics are ours.) A change of remedy, whereby no substantial right is affected, is not obnoxious to the fundamental law which forbids the impairment of contracts."

In *Lynch vs. Jacobson*, 55 Utah 129, at 137, the Supreme Court of that state, discussing a statute providing for an assessment to repair impaired capital stock by the secretary of state at page 137, said:

"The method of procedure to enforce the liability may be changed by the Legislature if such change does not enlarge or affect the liability of the stockholder in case the Constitution, as before stated, does not provide a method of procedure. *Western Nat. Bank v. Lawrence*, 117 Mich. 669, 76 N. W. 105; *Miners' Bank v. Snyder*, 100 Md. 57, 59 Atl. 707, 68 L. R. A. 312, 108 Am. St. Rep. 390; *Bernheimer v. Converse*, 206 U. S. 516, 27 Sup. Ct. 755, 51 L. Ed. 1163; *Henley v. Myers*, 215 U. S. 373, 30 Sup. Ct. 148, 54 L. Ed. 240."

In *Hill vs. Merchants Insurance Company*, 134 U. S. 515, this Court had under consideration a statute of the State of Missouri which provided for an enlarged execution against stockholders in insurance companies to recover alleged liability on stock subscription contracts; it being the contention of the appellant stockholder that inasmuch as neither the charter nor the contract provided for the enlarged execution at the time of his becoming a stockholder, that such statute was in violation of the obligation of his contract because of that fact. In overruling the contention of the appellant stockholder, this Court, speaking through Mr. Justice Harlan (134 U. S. at page 525), said:

134 U. S. Reps. 515 at 525.

* * * "The result of this construction of the charter of the insurance company is, that prior to the passage of the act of 1866, which took effect March 19, 1866,

no specific remedy was prescribed for creditors seeking to reach the unpaid subscriptions of stockholders. But it was open to them to proceed by a suit in equity. That such a remedy could be used without violating any provision of the company's charter, or any right of a stockholder, cannot be doubted. *But neither the company nor its stockholders had any vested right in that particular remedy.* They could only insist that the extent of their liability should not be increased. *The act of 1866 authorized an execution to be issued against a stockholder 'to an extent equal in amount to the amount of stock by him or her owned together with any amount unpaid thereon,' where no property or effects of the corporation could be found. This statute, if given a retrospective operation, certainly did increase the liability of those who became stockholders in the Excelsior Insurance Company prior to its passage.* But the defendant in error contends that it was applicable to all who, like Hill, became stockholders after its passage. Waiving any consideration of this question it is certain that the act of 1879, under which this action was instituted, did not increase Hill's liability. He was liable, by virtue of his original subscription and by his notes to the company, to pay the whole amount of his subscription. *The statute of 1879 did not enlarge this liability, for it authorized an execution against a stockholder, where there was no corporate property to be levied on, only 'to the extent of the amount of the unpaid balance of such stock by him or her owned.' While, under the original charter of the company, he was liable to a suit in equity, under the statute of 1879 he was liable to be proceeded against by notice and motion in the action in which judgment was rendered against the corporation. In either mode he had opportunity to make defense."* (Italics are ours.)

A well reasoned case on this subject is *Waggoner vs. Flack*, 188 U. S. 595. The question involved in the cited case was the constitutionality of a statute which provided for a change of remedy by a state in the forfeiture of lands sold by the state to individuals. The statute challenged in that

case provided for a declaration of forfeiture by the act of the commissioner, whereas the statute in effect at the time the contract was entered into, provided a remedy by resort to judicial proceedings for enforcing forfeiture.

This Court, speaking again through Mr. Justice Peckham (188 U. S. at page 601), said:

"We come, then, to the question of what was the contract, and whether it has been impaired by virtue of the enactment of the statute of 1897, under which the forfeiture has been enforced? Although not material it may yet be observed that the act of 1897 is not the first act which was passed subsequently to the act of 1885, reinstating the provisions for a forfeiture. By section 11 of the act of 1887, Laws, 1887, pp. 83, 86, provision was again made for forfeiting the lands on non-payment of moneys due, and the same was continued by section 11 of the Laws of Texas of 1895, pp. 63, 67.

"*We assume that, at the time these lands were purchased by Phillips, no statute existed providing for forfeiture by entry on the books of the state commissioner of the general land office, and it is admitted that only by virtue of the act of 1897 can the State now claim the right to forfeit the lands by an entry to that effect on the account kept with the purchaser, because of the failure to pay the interest since 1893. The plaintiff in error asserts that the statute of 1897, reinstating or providing for the right of the State to thus forfeit the lands for non-payment of moneys due by the purchaser of land, is an impairment of the contract created between the State and Phillips at the time his application for the land was granted by the state authorities;* and the plaintiff in error asserts he has succeeded to all the rights of Phillips, and this is not denied.

"We must first decide what were the obligations of the contract which was created by the granting of Phillips' application for the purchase of this land and the taking of his notes therefor. The Laws of Texas of 1883, chapter 58, as amended by chapter 12, page 13, Laws of 1885, furnished the evidence of the obligations

of the contract. By those acts it was made the duty of the commissioner of the general land office, after an application for a grant of land has been made and approved, to issue a patent to the purchaser or his assigns, etc., upon payment of all the purchase money and interest upon notes given for the purchase of the land, and provision was made for the giving of the notes or other evidences of the obligation of the purchaser to pay for the land. *His obligation was to pay these notes as they matured. The obligation of the State was to give the patent as mentioned. What particular remedy then existed by which the State might enforce the obligation of the contract made by the purchaser is not material in this aspect of the case.* It is true that the remedy for the enforcement of a contract sometimes enters into the contract itself, but that is where an endeavor has been made to so change the existing remedy that there is no effective and enforceable one left, or the remedy is so far impaired that the party desirous of enforcing the contract is left practically without any efficient means of doing so; but in the case of an alteration of a remedy, if one is left or provided which is fairly sufficient, the obligations of a contract are not impaired, although the remedies existing at the time it was entered into are taken away.

"It appears in the record that the plaintiff in error, or those he represents, failed for years to comply with the obligations of the contract, and failed to pay the interest as it became due, as they promised, and hence the contract was violated.

"The question, then, is, what is the remedy against the party who has broken the contract? The statute of 1897 is turned to for the authority to take possession of the land, the right to keep which the plaintiff in error had ceased to retain because of his failure to do that upon which such right was founded.

*"The plaintiff in error, however, says to the State, you cannot avail yourself of the remedy provided by the act of 1897, because it did not exist when I purchased the land, and you then contracted not to create any such remedy against me, and the evidence of the contract is*

*to be found in the statute of February 23, 1885, which was in force when I purchased.* But the answer is that, although at the time Phillips purchased the land a statute had taken away the remedy by way of forfeiture, as therein stated, yet the act taking away the remedy did not constitute a contract on the part of the State with all who purchased lands from it at that time, that it would never pass any other act by which the State might be empowered through its agents to forfeit the lands and take possession thereof by virtue of such forfeiture. The act of February 23, 1885, was a mere enactment, declaring the law to be as therein stated, upon the subject of a remedy for a violation by a purchaser of the obligations of his contract, and it did not assume to bind the hands of any future legislature that might think proper to deal with the subject. *There was no promise or contract expressed in the statute that the State would not enlarge the remedy or grant another on account of the purchaser's violation of his contract, and we think no such contract is to be implied.*

"A purchaser of lands at the time Phillips purchased had no right to assume that the State would not alter the law in the future so far as to give it another and better or a quicker remedy for a violation of his contract by the purchaser, than existed at the time the purchase was made. *To enact laws providing remedies for a violation of contracts, to alter or enlarge those remedies from time to time as to the legislature may seem appropriate, is an exercise of sovereignty, and it cannot be supposed that the State in a case like this, contracts in a public act of its legislature, to limit its power in the future, even if it could do so, with or without consideration, unless the language of the act is so absolutely plain and unambiguous as to leave no room for doubt that its true meaning amounts to a contract by it to part with its power to increase the effectiveness of existing remedies as against those who purchase lands while the act remains alive. No such language is to be found in the act in question, and none ought to be implied.*

"We cannot discern the difference in principle between this case and that of *Wilson v. Standefer,* 184

U. S. 399, which involved a portion of this same legislation. In that case the lands were purchased under the act of 1879, which provided (Sec. 12) for a forfeiture after judicial inquiry determining the failure of the purchaser to pay the annual installments of interest as they became due. Subsequently the act of 1897, already mentioned, was passed and that act, it is seen, authorized the commissioner, when any portion of the interest due by the purchaser had not been paid, to declare a forfeiture of the purchase without judicial aid, and it gave to his action the effect of putting an end to the contract. *It was under the act of 1897 that the forfeiture was declared in that case. There, as here, it was contended that the act of 1897 violated the contract between the parties.* It was urged that as the act of 1879 provided a remedy by a resort to judicial proceedings for the purpose of enforcing a forfeiture, that such remedy was a part of the contract, and that the act of 1897, which provided for a forfeiture of the lands without judicial action, was a violation of the contract, and therefore void. *This court held that the stipulation in the twelfth section of the act of 1879, providing for a judicial forfeiture, did not amount in legal contemplation to a promise by the State that the only remedy which might thereafter be resorted to by it was the one therein provided for. The court recognized the plain distinction between the obligation of a contract and a remedy given by the legislature to enforce that obligation, and it held that the remedy might be modified and enlarged without impairing such obligation.*" (Italics are ours.)

The cases of *Hill vs. Merchants Insurance Company, supra,* and *Waggoner vs. Flack, supra,* were cited with approval and followed in the case of *Bernheimer vs. Converse,* 206 U. S. 516, where this Court had under consideration the enforcement of the assessment liability of a stockholder in a corporation under the constitution and statutes of the State of Minnesota. Stating the contention of the appellant and discussing the same, this Court, speaking through Mr. Justice Day (206 U. S. at page 529), said:

"The fundamental contention upon which the argument of the plaintiffs in error against the constitutionality of this subsequent act rests is that the statute created a contract into which the stockholder entered upon subscribing to or obtaining his stock, which the legislature had no power to change without running counter to the constitutional requirement invalidating laws impairing the obligation of contracts. Constitution, art. 1 Sec. 10.

"It may be regarded as settled that, upon acquiring stock, the stockholder incurred an obligation arising from the constitutional provision, contractual in its nature, and, as such, capable of being enforced in the courts not only of that state, but of another state and of the United States (*Whitman v. National Bank*, 176 U. S. 559, 44 L. ed. 587, 20 Sup. Ct. Rep. 477), although the obligation is not entirely contractual, and springs primarily from the law creating the obligation (*Christopher v. Norwell*, 201 U. S. 216, 50 L. ed. 732, 26 Sup. Ct. Rep. 502).

"*Is there anything in the obligation of this contract which is impaired by subsequent legislatiton as to the remedy, enacting new means of making the liability more effectual?* The obligation of this contract binds the stockholder to pay to the creditors of the corporation an amount sufficient to pay the debts of the corporation which its assets will not pay, up to an amount equal to the stock held by each shareholder. *That is his contract, and the duty which the statute imposes, and that is his obligation.* Any statute which took away the benefit of such contract or obligation would be void as to the creditor, and any attempt to increase the obligation beyond that incurred by the stockholder would fall within the prohibition of the Constitution. *But there was nothing in the laws of Minnesota undertaking to make effectual the constitutional provision to which we have referred, preventing the legislature from giving additional remedies to make the obligation of the stockholder effectual, so long as his original undertaking was not enlarged. There is a broad distinction between laws impairing the obligation of contracts and those which*

*simply undertake to give a more efficient remedy to enforce a contract already made.*

"This principle was stated by Mr. Chief Justice Marshall in *Sturges v. Crowninshield*, 4 Wheat. 122, 4 L. ed. 529, as follows:

" 'The distinction between the obligation of a contract and the remedy given by the legislature to enforce that obligation . . . exists in the nature of things, without impairing the obligation of the contract, the remedy may certainly be modified as the wisdom of the nation shall direct.'

"The same rule is recognized in *Hill v. Merchants' Mut. Ins. Co.*, 134 U. S. 515, 33 L. ed. 994, 10 Sup. Ct. Rep. 589, *wherein a statute was sustained changing the character of the remedy against stockholders in common to one giving a direct remedy against an individual stockholder.* The principle was clearly enunciated in *Waggoner v. Flack*, 188 U. S. 595-603, 47 L. ed. 609-613, 23 Sup. Ct. 345-348, in which Mr. Justice Peckham, speaking for the court, said:

"To enact laws providing remedies for a violation of contracts, to alter or enlarge those remedies from time to time as to the legislature may seem appropriate, is an exercise of sovereignty, and *it cannot be supposed that the state, in a case like this, contracts in a public act of its legislature to limit its power in the future, even if it could do so, with or without consideration, unless the language of the act is so absolutely plain and unambiguous as to leave no room for doubt that its true meaning amounts to a contract by it to part with its power to increase the effectiveness of existing remedies.*'

"See, also, *Wilson v. Standefer*, 184 U. S. 399, 46 L. ed. 612, 22 Sup. Ct. Rep. 384; *New Orleans City & Lake R. Co. v. Louisiana*, 157 U. S. 219, 39 L. ed. 679, 15 Sup. Ct. Rep. 581." (Italics are ours.)

The Supreme Court of Iowa, in the case at bar, cited the case of *Henley vs. Myers*, 215 U. S. 373; 30 S. Ct. 148, 54 L. ed. 240, wherein this Court had under consideration a statute

which altered the manner of transferring stock in a corporation requiring the stockholder to file with the Secretary of State a statement of such change of ownership, etc. This was an additional limitation upon the right to transfer stock, a matter concerning the relationship between the state and the stockholder and the stockholders inter sese. This was challenged in the cited case as an impairment of the obligation of the stockholder's contract but that contention was overruled by this Court, speaking through Mr. Justice Harlan, in 215 U. S. at 385, wherein it was declared:

> "Equally without merit is the contention that the statute of 1899 impaired the obligations of the stockholder's contract, in that it substituted for individual actions against them a suit in equity by a receiver appointed after judgment against the corporation. *In becoming stockholders, the defendants did not acquire a vested right in any particular mode of procedure adopted for the purpose of enforcing their liability as stockholders.* It is a well-established doctrine that mere methods of procedure in actions on contract, that do not affect the substantial rights of parties are always within the control of the state. It is to be assumed that parties make their contracts with reference to the existence of such power in the state."

## CONCLUSION

The Act of 1894 (the appellee bank reincorporated and renewed its corporate existence in 1911) imposed *"the liability for an assessment upon the stockholder"* (appellant); provided that the board of directors should cause any deficiency in the capital stock to be made good *"by a ratable assessment upon the stockholder"* (appellant); required the notice thereof to the stockholder to recite *"the entire sum to be raised, and the amount due from the addressed stockholder"* (appellant); provided that should any stockholder

*"neglect or refuse to pay his assessment"* for a specified time that notice of the sale of a sufficient amount of his stock to make good the deficiency (in capital stock) which notice shall *"recite the assessment made,* (and) *the amount due thereunder from the stockholder."*

The title to the act provided for:

> "An act to provide for the better security of depositors in state and savings banks organized under the laws of Iowa."

This act unquestionably imposed a liability for such assessment upon the stockholder, and not merely a liability upon the stock in rem. Every provision of the act indicates this intent of the Legislature.

The act challenged in this suit provides that if the sale of stock of any stockholder be insufficient to satisfy "his entire assessment liability" he shall be personally liable for that deficiency. This merely makes his other property subject to judgment and execution for the remainder of his liability already existing and imposes not one whit of additional liability.

The title to the act provides for an amendment relating to "the collection of assessments against stockholders in banks."

The Supreme Court of Iowa held that the later enactment was remedial only and provided only for the collection of a liability already existing. Appellant contends that this holding is arbitrary and unreasonable and deprives appellant of his property without due process of law and that appellant was not given his day in court.

Such is not the case. The opinion of the Supreme Court of Iowa is sound in logic and well reasoned. No other construction could be placed upon a statute so plainly stating the intent of the legislature in passing the act, which is the law.

The inherent purpose of the original act was to provide for "better security for depositors in state and savings banks." It provided the stockholder's liability and appellant entered into his contract with the state, purchased his stock, reaped all the benefits of it over a long period of time, all with the act in full force and effect. He had no contract that the state would not alter the remedy.

Appellant's contention is especially unfounded when it is recalled that the state, long prior to the contract (articles of incorporation), reserved unto itself the power to alter or abridge the contract when deemed necessary for the public good; *the very contract he now attempts to stand upon and cry "impairment."*

Appellant may as well attempt to raise himself by his own bootstraps, for, as said by Mr. Justice Miller in *Greenwood vs. Freight Company*, 105 U. S. 13 at page 20:

> "A provision in the statute reserving to the legislature the right to amend or repeal it must be held to be a part of the contract itself, *and the subsequent exercise of the right would be in accordance with the contract, and could not, therefore, impair its obligation.*" (Italics are ours.)

Therefore, since appellant agreed to the contract, how can his obligation be impaired? How can he be denied due process of law when he agreed that the legislature could do exactly what it did do?

The statute is in the public interest. While it is not in the record, it may serve as an example. The subject bank has since closed. The stockholders who paid the assessment which appellant refused to pay to keep the bank solvent will now be called upon to pay another assessment for the benefit of creditors. Then the creditors lose.

Shall appellant go hence free from a liability clearly imposed upon him by his contract the benefits of which he enjoyed over many years?

The opinion of the Supreme Court of Iowa recognizes the intent of the legislature, gives effect to the appellant's contract, properly holds the challenged act an authorized change in remedy to collect an existing liability, is sound in logic and well reasoned, is well supported by highest authority, and should be affirmed by this court.

Respectfully submitted,

JOHN FLETCHER,

*Attorney General.*

EARL F. WISDOM,

*Assistant Attorney General.*

Counsel for Amicus Curiae

Service of the within and foregoing brief amicus curiae, and motion for leave to file same and to present oral argument thereon upon submission of this cause, is hereby accepted and the receipt of a copy thereof acknowledged on

this.....day of February, A. D. 1932.

.....

.....

.....

*Counsel for Appellant.*

.....

.....

.....

*Counsel for Appellee.*

# SUPREME COURT OF THE UNITED STATES.

No. 158.—October Term, 1931.

| | |
|---|---|
| Amos Shriver, Appellant, *vs.* Woodbine Savings Bank of Woodbine, Iowa. | Appeal from the Supreme Court of the State of Iowa. |

[April 11, 1932.]

Mr. Justice Stone delivered the opinion of the Court.

Appellee, an Iowa banking corporation, brought suit in the courts of that State to enforce the personal liability of appellant, its stockholder, for an assessment made under the Iowa statutes, which provide for the restoration of any impairment of capital of a bank, by assessment pro rata of the stockholders. The case comes here on appeal, Jud. Code § 237, from a judgment of the Iowa Supreme Court sustaining the assessment and upholding the statute, which is assailed as infringing the contract and due process clauses of the Federal Constitution. — Iowa —, 236 N. W. 10.

On different dates between 1891 and 1917, appellant acquired twenty-six shares of the capital stock of the appellee. Appellee, originally incorporated in 1891, was reincorporated in 1911, appellant acquiring a like number of shares in the new corporation. At that time the liability to assessment of the stockholders in the bank was controlled by §§ 1878, 1879, and 1880 of the 1897 Iowa Code, now appearing as §§ 9246-9250 of the 1927 Iowa Code. These sections authorize the superintendent of banks to require any impairment of capital of a state bank to be restored by an assessment upon its stockholders, as directed by an appropriate order of the superintendent, "fixing the amount of the assessment." Section 9247 imposes on the directors a duty to cause the deficiency in capital, thus determined, to be made good "by a ratable assessment upon the stockholders, for the amount of stock held by them", and requires the proper officers of the bank to give written notice of the assessment, addressed to the several stockholders, which "shall state the entire sum to be raised and the amount due from the addressed stockholder". Section 9248 provides:

"Should any stockholder neglect or refuse to pay his assessment within ninety days from the date of mailing notice thereof, the board of directors shall cause a sufficient amount of the capital stock held by such stockholder to be sold at public auction to make good the deficiency, after giving ten days' notice thereof by personal service or by posting the same in the bank, and publishing it in some newspaper of the county in which the bank is located, which notice shall recite the assessment made, the amount due thereunder from the stockholder, and the time and place of sale; proof of all which may be made in the manner provided in the preceding section."

After appellant had acquired his stock, a new section was added by the Act of March 13, 1925, c. 181, Iowa Laws, 1925, now § 9248-a (1) of the 1927 Iowa Code, reading as follows:

"Should the proceeds of a sale under the preceding section of all the stock of any stockholder be insufficient to satisfy his entire assessment liability, he shall be personally liable for the deficiency, which may be collected by suit brought in the name of the bank against such stockholder."

Following the adoption of this later section, the Superintendent of Banks determined that appellee's capital had been impaired 100% and directed an assessment accordingly. Acting under § 9248, appellee's directors sold appellant's stock for $1.00 a share, and the present suit was brought to recover the deficiency.

In answer to the objection that the Act of 1925 subjected appellant to an unconstitutional burden, appellee relies on the statutes antedating appellant's acquisition of his stock, as imposing on him personal liability to pay the assessment, without the aid of the quoted provision of the later Act. It also argues that even if there was no such liability under the earlier statutes, the adoption of the Act of 1925 was but an exercise of the power reserved to the legislature by § 12, Art. 8 of the Iowa Constitution, and by § 1619 of the 1897 Iowa Code (§ 1090 Iowa Code of 1873), providing that "the articles of incorporation, by-laws, rules and regulations of corporations hereafter organized . . . shall at all times be subject to legislative control, and may be at any time altered, abridged or set aside by law. . . ." It is insisted that the power thus reserved embraces not only a legislative withdrawal of any grant of immunity to the stockholders of the bank, from liability for its debts, but extends to the imposition on them of a new and continuing liability to pay any assessment levied for the restoration of capital of the bank.

The Supreme Court of Iowa found it unnecessary to pass upon these contentions. Expressly disclaiming any purpose to decide either of them, it assumed, for purposes of decision, that under the earlier statutes the deficiency after sale of the stock could not be collected from the stockholder. It then proceeded to point out that from the beginning the authorized assessments were not upon the stock of the bank, but upon the stockholders personally, and said, 236 N. W. 10, 12:

"According to the original statute, the stockholder was personally and primarily liable for the assessment, and section 9248 and its predecessors had to do only with the remedy and nothing else. Then, assuming that the only remedy originally made for the collection of the assessment was to confiscate the stockholder's stock, nevertheless, so far as the remedy was sufficient, the stockholder was personally liable for the assessment. This burden was cast upon the stockholder himself, even though the only remedy to enforce the obligation was by the sale of the stock. Consequently, appellant's obligation in the premises had not been increased. He was always obligated to pay the assessment. Of course, if he did not pay, the only remedy under the statute was to sell his stock; yet the obligation to pay was there just the same. Now, under the new legislation, the stockholder's liability has not been increased, but rather the remedy for enforcing that obligation has been changed. Were the remedy a part of appellant's contract, a change thereof would amount to an impairment. Barnitz *v.* Beverly, 163 U. S. 118; Conley *v.* Barton, 260 U. S. 677.

"Obviously in the case at bar, however, we are not confronted with a case where the remedy became a part of the contractual obligation. There is not a syllable in the statutory contract which in any way indicates that the remedy is a part of the agreement. It was not said by the legislature that there could be no other or different remedy. Hence it was perfectly proper for the law making body to adopt section 9248-a (1) of the 1927 Code, because such amendatory legislation pertained to the remedy only. The purpose of this legislative enactment was to afford a more appropriate remedy for an obligation already existing against appellant. Ever since becoming a stockholder of the appellee bank, he was obligated to pay any legal assessment made for the purpose of repairing the capital stock. This new legislation simply recognized that obligation and afforded a more complete remedy to enforce the same. No new obligation was created by the amendment, but rather the old was recognized and a better way to enforce it provided."

We find it unnecessary to answer the question implicit in this disposition of the case, whether an obligation can be said to exist

apart from a remedy to enforce it—whether within the meaning of the contract clause any personal obligation of a stockholder in the nature of a contract to restore his pro rata share of any impairment of the corporate capital, can be said to exist independently of some means or remedy for enforcing it in addition to the sale of his stock.

Nor are we called on to discuss here the suggestion that even though the sale of the stock was the only means of collecting assessments, the contract and due process clauses do not guarantee appellant against the selection and the application to him of any other remedy reasonably adapted to carrying out the policy and purpose plainly declared by the earlier statute, to require complete restoration of any impairment of corporate capital by assessment of the stockholders. See *Henley* v. *Myers*, 215 U. S. 373; *League* v. *Texas*, 184 U. S. 156, 158; *Graham & Foster* v. *Goodcell*, 282 U. S. 409, 426; *Milliken* v. *United States*, 283 U. S. 15, 20 *et seq.*; *People* v. *Adams State Bank*, 272 Ill. 277; *Irvine* v. *Elliott*, 203 Fed. 82, 96-97. For we conclude that appellant does not sustain the burden which rests on him of establishing that the later statute is unconstitutional because imposing a liability to which he was not subject under the earlier one.

In strictness, appellant presents no question of impairment of the obligation of contract, for it is not insisted that either party has been deprived by legislative action of any right or remedy secured by the statute in force when appellant acquired his stock. His objection is not directed to any such impairment of right or obligation. It is rather that the Act of 1925 imposed on him a personal obligation where none existed before, and that its imposition, by fiat of the law, after he had bought his stock, operates to deprive him of property without due process of law. See *League* v. *Texas, supra*, pp. 158, 161. This contention is, of course, without support if the liability to pay the full assessment declared by the earlier statute was then enforcible by any appropriate form of remedy. See *Pinney* v. *Nelson*, 183 U. S. 144, 147; *Whitman* v. *Oxford National Bank*, 176 U. S. 559; *Thomas* v. *Matthiessen*, 232 U. S. 221.

The Supreme Court of Iowa has given no authoritative answer to the question whether, before the Act of 1925, there was any remedy other than sale of the stock by which an assessment might be recovered from a stockholder. In the present case it did

not decide the question, contenting itself with the observation that "the only remedy *under the statute* was to sell his stock." In two earlier cases, arising long after appellant acquired his stock, it had expressed the view that the only remedy for enforcing the payment of assessments was by sale of the shareholder's stock. See *Leach* v. *Arthur Savings Bank*, 203 Iowa 1052, 1057; *Andrew* v. *People's State Bank*, 234 N. W. 542, 546 (Iowa). But in neither was this statement necessary to the decision, nor did it have any bearing on the question actually decided. Both followed the passage of the Act of 1925. In no other cited case has the question been considered.

Where legislation is assailed as impairing the obligation of contract, this Court, in defining the scope of the constitutional immunity, will determine for itself what the contract is for whose protection the immunity is invoked. See *Appleby* v. *City of New York*, 271 U. S. 364, 379, 380. In the circumstances of this case, also, where the alleged infringement of the Fourteenth Amendment turns on the asserted non-existence of a contractual obligation to do that which the challenged statute exacts, appellant must satisfy this Court that he was not so bound. For, here, the nature and extent of his obligation depend upon the construction of a local statute which the highest court of the state has indicated by its latest decision is still open for determination. See *Brunswick Terminal Co.* v. *National Bank of Baltimore*, 192 U. S. 386, 392 *et seq.*; cf. *Broad River Power Co.* v. *South Carolina*, 281 U. S. 537, 540.

The meaning of the sections now in question must be ascertained in the light of the legislative policy of the state. They are a part of its public laws, dealing with a subject of public concern, the stability and solvency of state banking institutions. See *Noble State Bank* v. *Haskell*, 219 U. S. 104, 111, 112; *Bank of Oxford* v. *Love*, 250 U. S. 603. Those laws confer on the Superintendent of Banks full authority to require a bank to restore impairments of its capital. § 9235 Iowa Code of 1927 (§ 1572 Iowa Code of 1873). He may cause its liquidation if it refuses to comply with his order or is in an insolvent or unsafe condition, or the interests of creditors require it to be closed. §§ 9238, 9239 Iowa Code of 1927 (§ 1572 Iowa Code of 1873). The stockholders are made individually liable to creditors, §§ 9251-9252 Iowa Code of 1927

(§ 1882 Iowa Code of 1897); and any bank, whether its charter has expired or not, may be dissolved by vote of three-fourths of the stockholders. § 9277 Iowa Code of 1927 (§ 1857 Iowa Code of 1897).

These sections exhibit an unmistakable purpose to maintain the banks of the state in a solvent condition with capital unimpaired, which is specifically given effect by §§ 9246-9248 of the 1927 Code. By these sections the appellant was made aware, when he acquired his stock, that in the event of any impairment of capital of the bank, the Superintendent of Banks was authorized to "require an assessment upon the stockholders" and to fix "the amount of the assessment required"; that the directors of the bank could be ordered by the Superintendent to "cause such a deficiency to be made good by a ratable assessment upon the stockholders"; that the officers of the corporation were required to give notice to each stockholder of "the entire sum to be raised and the amount due from the addressed stockholder"; and that after 90 days, allowed for the payment of the assessment, his stock might be sold upon an advertisement required to "recite the assessment made and the amount due thereunder from the stockholder". These are phrases importing legal liability. They define an obligation imposed by the statute upon the stockholders to pay the assessments to the bank, see *Whitman* v. *Oxford National Bank*, 176 U. S. 559, 562, by which alone the complete restoration of impaired capital, which is the legislative purpose, could be secured with certainty.

If no specific remedy of any kind had been provided to compel payment of assessments, there could be little doubt that the effect of these provisions would have been to create an obligation or liability, quasi-contractual in nature, on the part of stockholders acquiring their stock after the enactment, to pay to the bank a sum certain, that is, the assessment when made, for which the common law affords a remedy in debt or *indebitatus assumpsit* or its modern equivalent. See *Mills* v. *Scott*, 99 U. S. 25; *Whitman* v. *Oxford National Bank*, 176 U. S. 559; *Flash* v. *Conn*, 109 U. S. 371; *Bernheimer* v. *Converse*, 206 U. S. 516, 529; *Price* v. *United States*, 269 U. S. 492, 500; *United States* v. *Chamberlin*, 219 U. S. 250; *Meredith* v. *United States*, 13 Pet. 486, 493; *Steamship Company* v. *Joliffe*, 2 Wall. 450, 457; *Converse* v. *Hamilton*, 224 U. S. 243,

253; *Farmers Loan & Trust Co.* v. *Funk*, 49 Neb. 353. See James B. Ames, Lectures on Legal History, Implied Assumpsit, 149, 161.

In the face of the sweeping language of the statute, the mere fact that it gave a remedy by sale of the stock cannot be taken as necessarily precluding resort to the common law remedy, which would otherwise be available and by which alone the liability declared could in many cases be successfully enforced. The summary remedy by a sale would often be a speedy and convenient alternative method of enforcing the statutory liability to pay assessments. But it is not stated to be exclusive and its adoption involves no necessary inconsistency with the continued existence of a common law remedy for the recovery of the sum certain fixed by the assessment and declared to be due by the statute. In those instances where the impairment is more than 50% of the capital, the remedy by sale would be insufficient to enforce the liability declared. No reason is suggested why such a remedy should, by mere implication, be deemed exclusive or why the statute should be so construed by inference as to defeat its obvious purpose, or limit or destroy the liability which, in plain terms, it has created.

It is true that where a statute creates a liability and provides a remedy by suit specially adapted to its enforcement, other less appropriate common law remedies are impliedly excluded. See *Evans* v. *Nellis*, 187 U. S. 271; *Pollard* v. *Bailey*, 20 Wall. 520, 527; *Williamson* v. *American Bank*, 115 Fed. 793; cf. *Middletown Bank* v. *Railway Company*, 197 U. S. 394. And in every case conditions precedent to the statutory liability must be satisfied before any form of remedy can be resorted to. *Fourth National Bank* v. *Francklyn*, 120 U. S. 747; *Middletown Bank* v. *Railway Company*, *supra*; *State National Bank* v. *Sayward*, 91 Fed. 443. But here the conditions of liability, the order of the Superintendent of Banks, the assessment by the directors, and the notice fixing the amount of appellant's obligation, have all been performed. Here, the remedy provided is a summary and only partially effective supplement or alternative to that which the common law affords for enforcing the obligation to pay a sum certain, which, when fixed by the prescribed assessment, is declared to be due and owing. The very fact that the remedy is on its face inadequate to compel full performance of the obligation declared, is persuasive that it was not intended to be exclusive of applicable common law remedies, by which complete performance might be secured.

Administrative remedies for the collection of taxes, if not made exclusive by statute, do not preclude the recovery of the tax by a common law action of debt. *Price* v. *United States*, 269 U. S. 492, 500; *United States* v. *Chamberlin*, 219 U. S. 250, 262; *Dollar Savings Bank* v. *United States*, 19 Wall. 227, 238-239; *Meredith* v. *United States*, 13 Pet. 486, 493; see *Stockwell* v. *United States*, 13 Wall. 531, 542. And in general the liability of stockholders to assessment under local statutes is deemed transitory in nature, enforcible by common law remedies in states other than that of the corporation, although special statutory forms of remedy given by the local statute could not be resorted to elsewhere. See *Whitman* v. *Oxford National Bank*, 176 U. S. 559; *Hancock National Bank* v. *Farnum*, 176 U. S. 640; *Hale* v. *Hardon*, 95 Fed. 747; *Rhodes* v. *United States National Bank*, 66 Fed. 512; *Dexter* v. *Edmands*, 89 Fed. 467.

The enactment of the statute of 1925, specifically authorizing a suit for the deficiency after the sale of the stock, served to remove any possible doubts and rendered certain what may previously have been thought by some to be uncertain. But it can hardly be taken to be a legislative determination that under the earlier statutes no common law remedy could be availed of for the collection of assessments. If not, mere variations of the remedy or the creation of new ones, even though more onerous, for the enforcement of a pre-existing obligation to pay assessments in full, are unobjectionable. See *Hill* v. *Merchants' Mutual Insurance Co.*, 134 U. S. 515; *League* v. *Texas*, 184 U. S. 156, 158; *Henley* v. *Myers*, 215 U. S. 373; *Conley* v. *Barton*, 260 U. S. 677.

In the absence of an authoritative construction by the state court of the statutes in force when appellant acquired his stock, we cannot say that he was not personally liable for his pro rata share of any impairment of the bank's capital assessed against him while he remained a stockholder, whether his stock was sold under § 9248-a (1), or not, or that the later statute, which provided a remedy for enforcing such liability, infringed his constitutional rights.

*Affirmed.*

A true copy.

Test:

*Clerk, Supreme Court, U. S.*